S. Hrg. 98-1030 Part 2

DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 5712

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1985, AND FOR OTHER PURPOSES.

(Part 2—pages 1-911)

Arms Control and Disarmament Agency
Commission on Security and Cooperation in Europe
Department of Commerce
Department of Transportation (Maritime Administration)
Department of Justice
Federal Maritime Commission
Federal Trade Commission
Japan-United States Friendship Commission
Legal Services Corporation
Marine Mammal Commission
Office of the U.S. Trade Representative
Small Business Administration
The Judiciary

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
38-276 O WASHINGTON : 1985

S181-20

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES

PAUL LAXALT, Nevada, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
LOWELL P. WEICKER, JR., Connecticut	DANIEL K. INOUYE, Hawaii
WARREN RUDMAN, New Hampshire	DENNIS DECONCINI, Arizona
MARK O. HATFIELD, Oregon	DALE BUMPERS, Arkansas
ARLEN SPECTER, Pennsylvania	THOMAS F. EAGLETON, Missouri
	JOHN C. STENNIS, Mississippi (Ex Officio)

Committee Staff

RICK SPEES
JOHN SHANK
SANTAL MANOS

WARREN W. KANE *(Minority)*
MARILYN WASHINGTON

TABLE OF CONTENTS

WEDNESDAY, APRIL 4, 1984

Page

Department of Justice:
  Federal Bureau of Investigation 1
  Drug Enforcement Administration 9
Federal Trade Commission 71
Office of the U.S. Trade Representative 105

MONDAY, APRIL 30, 1984

The Judiciary:
  Supreme Court 135
  Courts of Appeals, District Courts, and Other Judicial Services 151
Arms Control and Disarmament Agency 263

TUESDAY, MAY 1, 1984

Department of Commerce:
  National Oceanic and Atmospheric Administration 295
Marine Mammal Commission 437
Small Business Administration 459

WEDNESDAY, MAY 2, 1984

Legal Services Corporation 487

FRIDAY, MAY 25, 1984

Department of Justice: Attorney General 677

SUBMITTED TESTIMONY

The Judiciary:
  Administrative Office of the U.S. Courts 155
  Architect of the Capitol 136
  Federal Judicial Center 159
  United States Court of Appeals for the Federal Circuit 152
  United States Court of International Trade 154
Department of Transportation: Maritime Administration 867
Commission on Security and Cooperation in Europe 871
Federal Maritime Commission 898
Japan-United States Friendship Commission 904

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

WEDNESDAY, APRIL 4, 1984

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m. in room S-146, the Capitol, Hon. Warren Rudman presiding.

Present: Senators Rudman and Specter.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF FRANCIS M. MULLEN, JR., ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

ACCOMPANIED BY:

- **WILLIAM LEE COLWELL, EXECUTIVE ASSISTANT DIRECTOR FOR ADMINISTRATION, FBI**
- **THOMAS A. HUGHES, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICES DIVISION, FBI**
- **JAMES K. WILLIAMS, CHIEF, BUDGET SECTION, OPERATIONAL SUPPORT DIVISION, DEA**
- **WILLIAM D. VAN STAVOREN, DEPUTY ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE**
- **CHARLES R. NEILL, CONTROLLER, DEPARTMENT OF JUSTICE**
- **JOHN R. SHAFFER, DIRECTOR, BUDGET STAFF, DEPARTMENT OF JUSTICE**

INTRODUCTION OF WITNESSES

Senator RUDMAN. The subcommittee will come to order.

This morning we will receive testimony from the Federal Bureau of Investigation and the Drug Enforcement Administration, the Federal Trade Commission, and the U.S. Trade Representative. Our first request this morning will be that of the FBI and the DEA.

It is a pleasure to welcome Judge William H. Webster, Director of the FBI, and Mr. Francis Mullen, Administrator of the DEA.

We are glad to have you here this morning and hope we will get through the hearing in a prompt manner. I assume you have a complete statement, and to the extent you would like to submit it, it will be put in the record.

Judge Webster, if you call on your colleagues and introduce them, we would appreciate that.

INTRODUCTION OF ASSOCIATES

Judge WEBSTER. Mr. Chairman, to my left is Thomas A. Hughes, Inspector-Deputy Assistant Director of the Financial Management Branch of the Administrative Services Division. To his left is Mr. William Colwell, Executive Assistant Director for Administration.

Mr. MULLEN. Mr. James Williams, Chief of the Budget Section, Operational Support Division, and Mr. William Van Stavoren, Deputy Assistant Attorney General for Administration

Senator RUDMAN. Good morning, gentlemen.

OPENING STATEMENT

Judge WEBSTER. Mr. Chairman, the fiscal year 1985 appropriations requests, which Bud Mullen and I present to you and your subcommittee today, confirm our desire to step up the war against narcotics trafficking and continue the enhancement of technologies with which we perform our missions.

BUDGET REQUESTS

The FBI request for 1985 is for 20,889 permanent positions and $1,157,223,000. This request includes net program increases of 538 positions and $93.5 million for our Foreign Counterintelligence and Organized Crime Programs, including narcotics enforcement, continued expansion of our ADP and Telecommunications technologies, and continued across-the-board improvement in technical equipment support to field investigations. This budget request also includes funding to initiate expansion of our facilities at Quantico, Va.

The Drug Enforcement Administration request for fiscal year 1985 is for 4,438 permanent positions and $334,654,000. These amounts include net program increases of 22 positions and $6,352,000 for additional special enforcement operations, expansion of intelligence capabilities, and ADP/telecommunications initiatives.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

Both budget proposals request additional resources for the organized crime drug enforcement task forces and that funding for these task forces be moved into our respective direct appropriations.

Mr. Chairman, in January 1982, the Attorney General assigned to the FBI, concurrent jurisdiction in narcotics enforcement. The President then asked this Congress to fund the 12 organized crime drug enforcement task forces. As a result of congressional action in January 1983, the FBI is now funded for 334 agents for these task forces and the DEA is funded for another 274 agents. For fiscal year 1985, to establish a 13th task force, the FBI is requesting an additional $2.4 million and 35 positions, including 28 agents. The DEA is requesting an identical amount for their participation.

It is my judgment, which Bud shares, that the cooperative focusing of resources by the FBI, DEA, and other law enforcement agencies, particularly through the drug task forces, is a major step forward in the drug enforcement arena. Prior to January 1983, the FBI and DEA were engaged in 12 joint investigations, we now have 751 joint investigations. As a result of the task force initiatives through March 7, 1984, 337 indictments have been returned regarding 1,731 defendants. Convictions have been registered against 443 major narcotics traffickers. These accomplishments have resulted from all of the task force cases of which an approximate 75 percent involve FBI participation and 86 percent involve DEA participation.

CASELOAD INVESTIGATIONS

An example of the types of investigations being conducted by the task forces, is one worked by the Southeast regional task force involving Harold Rosenthal. In this operation, Harold Rosenthal, a U.S. citizen, was identified as the principal international broker of cocaine between a major Colombian supplier, numerous established organized crime figures, and other U.S. and Colombian underworld cocaine distributors in the United States and South America.

This task force case, initiated by DEA in Atlanta and later joined by the FBI, involved substantial electronic surveillance by the task forces in Florida, Georgia, and California. This investigation, which began in August 1982, resulted in the undercover penetration of Rosenthal's organization by DEA special agents.

On January 23, 1984, an indictment was unsealed charging 30 individuals with participating in a smuggling operation which is estimated to have imported 5 tons of cocaine into the United States, including the States of Georgia, Florida, Tennessee, and Pennsylvania.

Harold Rosenthal was captured by Colombian authorities and returned to the United States. This particular investigation not only highlights the significance of the task force cases but also the international character of these complex drug and distribution investigations.

Mr. Chairman, I have dwelled on the drug task forces, since this is the first opportunity I have had to report on their progress to your committee. I believe that the resources furnished for this work are being very productively utilized.

PREPARED STATEMENT

Mr. Chairman, I know Bud Mullen has an opening statement which he will submit for the record and that you have questions for both of us, so at this point I will furnish the remainder of my statement and a much more detailed accounting of FBI activities for the record.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM H. WEBSTER

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, the fiscal year 1985 Appropriation requests, which Bud Mullen and I present to you and your subcommittee today, confirms our desire to step up the war against Narcotics trafficking and contunue the enhancement of technologies with which we perform our missions.

The FBI request for 1985 is for 20,889 permanent positions and $1,157,223,000. This request includes net program increases of 538 positions and $93.5 million for our Foreign Counterintelligence and Organized Crime programs, including narcotics enforcement, continued expansion of our ADP and Telecommunications technologies, and continued across-the-board improvement in technical equipment support to field investigations. This budget request also includes funding to initiate expansion of our facilities at Quantico, Virginia.

The Drug Enforcement Administration request for fiscal year 1985 is for 4,438 permanent positions and $334,654,000. These amounts include net program increases of 22 positions and $6,352,000 for additional special enforcement operations, expansion of intelligence capabilities, and ADP/Telecommunications initiatives.

Both budget proposals request additional resources for the Organized Crime Drug Enforcement Task Forces and that funding for these task forces be moved into our respective direct appropriations.

Mr. Chairman, in January 1982, the Attorney General assigned to the FBI, concurrent jurisdiction in narcotics enforcement. The President then asked this Congress to fund the 12 Organized Crime Drug Enforcement Task Forces. As a result of Congressional action in January 1983, The FBI is now funded for 334 agents for these task forces and the DEA is funded for another 274 agents. For fiscal year 1985, to establish a 13th Task Force the FBI is requesting an additional $2.4 million and 35 positions, including 28 agents. The DEA is requesting an identical amount for their participation.

It is my judgment, which Bud shares, that the cooperative focusing of resources by the FBI, DEA and other law enforcement agencies, particularly through the drug task forces, is a major step forward in the drug enforcement arena. Prior to January 1983, the FBI and DEA were engaged in 12 joint investigations, we now have 751 joint investigations. As a result of the task force initiatives through March 7, 1984, 337 indictments have been returned regarding 1,731 defendants. Convictions have been registered against 443 major narcotics traffickers. These accomplishments have resulted from all of the task force cases of which an approximate 75 percent involve FBI participation and 86 percent involve DEA participation.

An example of the types of investigations being conducted by the task forces, is one worked by the Southeast Regional Task Force involving Harold Rosenthal.

In this operation, Harold Rosenthal, a U.S. citizen, was identified as the principal international broker of cocaine between a major Colombian supplier, numerous established organized crime figures, and other U.S. and Colombian underworld cocaine distributors in the United States and South America.

This task force case, initiated by DEA in Atlanta and later joined by the FBI, involved substantial electronic surveillance by teh task forces in Florida, Georgia, and California.

This investigation, which began in August 1982, resulted in the undercover penetration of Rosenthal's organization by DEA Special Agents.

On January 23, 1984, an indictment was unsealed charging 30 individuals with participating in a smuggling operation which is estimated to have imported 5 tons of cocaine into the United States, including the states of Georgia, Florida, Tennessee, and Pennsylvania.

Harold Rosenthal was captured by colombian autnorities and returned to the United States. This particular investigation not only highlights the significance of the task force cases but also the international character of these complex drug distribution investigations.

Mr. Chairman, I have dwelled on the drug task forces, since this is the first opportunity I have had to report on their progress to your committee. I believe that the resources furnished for this work are being very productively utilized.

Mr. Chairman, I know Bud Mullen has an opening statement which he will submit for the record and that you have questions for both of us, so at this point I will furnish the remainder of my statement and a much more detailed accounting of FBI activities for the record

In 1981, the FBI made a major commitment to investigate nontraditional organized criminal activity to parallel our continued emphasis on the La Cosa Nostra families. The primary focus of this effort is against the four largest outlaw motorcycle gangs, the Hells Angels, Outlaws, Pagans, and Bandidos. Although the main criminal activity of these groups is narcotics, they are also involved in contract murders, extortion, prostitution, firearms violations, car theft, and witness intimidation. This commitment is beginning to pay dividends. To date, major convictions or indictments have been obtained against members of the Hells Angels and Outlaws and are anticipated in the near future against all four major motorcycle gangs, as well as many smaller gangs. In addition, the FBI is actively pursuing investigations against several prison gangs such as the La Nuestra Familia, the Mexican Mafia, and the Aryan Brotherhood. To sustain these efforts we are requesting an additional 315 positions and $12.3 million for the Organized Crime Program are requested.

The FBI is requesting funding for two new facilities at the FBI Academy at Quantico, Virginia, which will do much to support not only FBI operations, but enhance its capacity to aid state and local law enforcement agencies. The training program request includes $2.8 million for site and engineering funding for a third dormitory/classroom building for the academy. This facility will alleviate the current overcrowding which in fiscal year 1983 caused us to regretfully cancel sixteen state and local training courses at Quantico.

The FY 1985 budget also includes $10 million for a new facility at Quantico to house the Engineering/Section of our Technical Services Division. This group combines research and development with practical application in providing the FBI and law enforcement with state-of-the-art technology and techniques. The DEA Science and Engineering Section will also be relocated to this facility to promote cooperation and expertise between these two important groups.

In addition to funding the Engineering Facility at the FBI Academy, a $10 million funding base will be established for research and development for criminal investigative equipment. The sophisticated electronics equipment available today to criminal groups, especially the narcotics syndicates, is astonishing. Approval of this funding will fill a void in FBI Technical Services to its field investigations and place the forefront of technological countermeasures.

Funding requested in this budget will continue the expansion of the Field Office Information Management System providing this technology to the west coast offices.

The Congress has supported substantial enhancements to our Foreign Counterintelligence Program in recent years. This support is appreciated. The FBI is achieving major successes in this area. Most accomplishments in the Foreign Counterintelligence Program cannot be discussed because of security considerations. However, this past October, agents in San Francisco arrested James Durand Harper, Jr., for espionage. Harper is charged with selling among other items, classified national defense information on the Minuteman Intercontinental Ballistic Missile, to polish intelligence officers abroad.

The acting director of technology in the Army's Ballistic Missile Program has been quoted as saying that the documents stolen in this case would cause serious damage to our national security "The value of the documents... is beyond calculation."

Additional detail regarding the fiscal year 1985 budget request of the FBI follows:

(CLERKS NOTE: The material referred to will be held in the Subcommittee's files and will be made available for viewing upon request.)

PREPARED STATEMENT OF FRANCIS M. MULLEN, JR.

ADMINISTRATOR

DRUG ENFORCEMENT ADMINISTRATION

I AM PLEASED TO APPEAR AGAIN BEFORE THIS SUBCOMMITTEE TO DISCUSS THE DRUG ENFORCEMENT ADMINISTRATION (DEA) BUDGET AND HOW IT RELATES TO OUR MISSION, OUR ACCOMPLISHMENTS, AND OUR PLANS FOR FISCAL YEAR 1985.

PRESIDENT REAGAN HAS REPEATEDLY AND CLEARLY STATED HIS INTENTION TO END THE DRUG MENACE AND CRIPPLE ORGANIZED CRIME. THIS INCLUDES NOT ONLY THE TRADITIONAL SYNDICATES, SUCH AS LA COSA NOSTRA, BUT ALSO NEWER CRIMINAL ENTERPRISES, SUCH AS THE COLOMBIAN "COCAINE COWBOYS", OUTLAW MOTORCYCLE GANGS, AND SOUTHEAST ASIAN GROUPS. TOGETHER, THESE ORGANIZED SYNDICATES CONSTITUTE MAJOR CRIMINAL ENTERPRISES WITH SIGNIFICANT OVERSEAS CONNECTIONS.

THE SALE OF NARCOTICS IS THE SINGLE MOST PROFITABLE VENTURE UNDERTAKEN BY CRIMINAL ENTERPRISES. THESE PROFITS ARE THEN USED TO FINANCE OTHER CRIMINAL ACTIVITIES. BECAUSE OF THIS, ONE OF THE MOST EFFECTIVE MEANS OF CRIPPLING ORGANIZED CRIME IS TO TAKE VIGOROUS ENFORCEMENT ACTION AGAINST DRUG TRAFFICKERS WHICH RESULTS IN THE LOSS OF THESE PROFITS.

SINCE 1973, DEA HAS BEEN THE LEAD LAW ENFORCEMENT AGENCY RESPONSIBLE FOR INVESTIGATING U.S. DRUG LAW VIOLATIONS, AND THE SOLE U.S. AGENCY AUTHORIZED TO INVESTIGATE DRUG TRAFFICKING OVERSEAS. ADDITIONALLY, DEA IS THE ONLY AGENCY WITH AUTHORITY TO REGULATE AND MONITOR THE

MANUFACTURE AND DISTRIBUTION OF LEGAL DRUGS. IT ALSO HAS THE LEAD ROLE IN THE DEVELOPMENT OF NARCOTICS INTELLIGENCE.

AS THE LEAD AGENCY FOR DRUG ENFORCEMENT, DEA PLAYS A CRUCIAL ROLE IN THIS ADMINISTRATION'S CAMPAIGN AGAINST ORGANIZED CRIME AND DRUG TRAFFICKING. DURING THE PAST FISCAL YEAR, WE HAVE TAKEN TREMENDOUS STRIDES IN EFFECTING A UNIFIED, SUSTAINED ASSAULT AGAINST THE ILLICIT DRUG TRAFFIC, BOTH DOMESTICALLY AND ABROAD. WE HAVE MAINTAINED CLOSE WORKING RELATIONSHIPS WITH OTHER FEDERAL AGENCIES, INCLUDING THE FEDERAL BUREAU OF INVESTIGATION (FBI), THE U.S. CUSTOMS SERVICE, THE COAST GUARD, THE NAVY, THE AIR FORCE, THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (BATF), AND THE INTERNAL REVENUE SERVICE (IRS), WITH NUMEROUS STATE AND LOCAL AGENCIES, AND ALSO WITH FOREIGN ENFORCEMENT ENTITIES.

THE AUGMENTATION OF OUR RESOURCES WHICH RESULTED FROM THE 1982 ASSIGNMENT OF CONCURRENT JURISDICTION TO THE FBI FOR DRUG LAW VIOLATION INVESTIGATIONS HAS PROVIDED US WITH ENHANCED FLEXIBILITY IN ATTACKING THE DRUG TRADE. FBI SUPPORT OF OUR ENFORCEMENT MISSION HAS ALREADY RESULTED IN IMPRESSIVE TEAMWORK. BY MARCH 19, 1984, THE NUMBER OF COOPERATIVE DEA/FBI INVESTIGATIONS HAD INCREASED FROM 12 IN JULY OF 1981 TO 751. VALUABLE EXPERTISE IN THE AREAS OF WIRETAPS, FINANCIAL INVESTIGATIONS, ORGANIZED CRIME, AND PUBLIC CORRUPTION HAS BEEN SHARED BY BOTH AGENCIES. DEA AND FBI AGENTS HAVE BEEN CROSS TRAINED TO ENHANCE THEIR EFFECTIVENESS IN THE FIELD. ALL FBI AGENTS HAVE BEEN EXPOSED TO TRAINING IN NARCOTICS INVESTIGATIONS. OF THESE AGENTS, APPROXIMATELY 600 HAVE RECEIVED SPECIALIZED NARCOTICS TRAINING. DEA AGENTS HAVE ALSO RECEIVED TRAINING REGARDING THE FBI MISSION AND SERVICES. ADDITIONALLY, BOTH

AGENCIES' INFORMATION/INTELLIGENCE DATA BASES HAVE BEEN EXPANDED, AND FORENSIC LABORATORY SUPPORT HAS INCREASED.

MUCH HAS BEEN ACCOMPLISHED AS A RESULT OF THIS HEIGHTENED EFFICIENCY, AND AS A CONSEQUENCE OF THE COOPERATION PROVIDED BY STATE, LOCAL, AND OTHER FEDERAL AGENCIES. MUCH STILL REMAINS TO BE DONE.

IN FY 1983, DEA AVERAGED APPROXIMATELY 1,000 ARRESTS AND 800 CONVICTIONS PER MONTH. THIS FIGURE INCLUDES DEA-ASSISTED STATE AND LOCAL ARRESTS AND CONVICTIONS. DOMESTIC DRUG SEIZURES WERE AS FOLLOWS: HEROIN SEIZURES INCREASED IN 1983 FROM 230.8 KILOS TO 306.4 KILOS. SEIZURES OF COCAINE INCREASED FROM 4,946.5 KILOS TO 7,569.3 KILOS. MARIJUANA SEIZURES DECREASED SLIGHTLY FROM 1,074,338.9 KILOS TO 1,044,648 KILOS. INCREASED EFFORTS WERE DIRECTED INTO THE ERADICATION OF DOMESTIC MARIJUANA. IT IS ESTIMATED THAT CLOSE TO FOUR MILLION PLANTS WERE DESTROYED IN FY 1983 BY LOCAL LAW ENFORCEMENT AGENCIES. ALSO DURING THE PAST YEAR, 234 CLANDESTINE LABORATORY SEIZURES WERE REPORTED TO DEA, OF WHICH 182 WERE THE RESULT OF DEA INVESTIGATIONS AND 52 WERE THE RESULT OF STATE AND LOCAL EFFORTS. INCLUDED IN THE SEIZURES WERE 94 METHAMPHETAMINE AND 33 PCP LABORATORIES.

IN 1983, THE DOMESTIC MARIJUANA ERADICATION/SUPPRESSION PROGRAM WAS EXPANDED FROM 25 TO 40 STATES. UNDER THIS PROGRAM, DEA ACTIVELY SUPPORTS STATE AND LOCAL JURISDICTIONS ENGAGED IN MARIJUANA ERADICATION AND SUPPRESSION EFFORTS BY CONTRIBUTING FUNDING, TRAINING, AND INVESTIGATIVE AND AERIAL SUPPORT. ONE MEASURE OF THE SUCCESS OF THIS INITIATIVE IS, THAT TO AVOID AERIAL DETECTION, THERE has been a marked increase in the number of greenhouses used for cultivation.

An important aspect of this program in 1983 was the use of the herbicide paraquat on marijuana fields. Paraquat was used to eradicate marijuana on Federal lands in Georgia and Kentucky during August 1983. This resulted in court challenges by the National Organization for the Reform of Marijuana Laws and by the Sierra Club to enjoin DEA from further use of paraquat on Federal lands.

As a result of the court proceedings, DEA agreed to the preparation of an Environmental Impact Statement (EIS) prior to any continued use of herbicides. We are proceding to develop the EIS. Four public "scoping" meetings took place in January in Atlanta, Denver, Spokane, and Washington, D.C.. They provided a forum for public input on the scope of the issues and alternatives to be examined in an EIS. We are determined to continue aggressive eradication efforts even if it has to be done manually.

Since March 1982, DEA has participated in the South Florida Task Force along with Customs, BATF, INS, and the Coast Guard. DEA and Customs participate in this program under a Florida Joint Task Group which conducts both pre- and post-drug smuggling investigations, as well as financial investigations in the State of Florida. For the period 3/82 to 9/83, these efforts have resulted in 1,677 arrests, 1,043 drug seizures, and a total of $22,579,340 in asset seizures.

Two other cooperative ventures against marijuana and cocaine trafficking in the Caribbean in which we are participating are

Operation BAT in the Bahamas, Turk/Caicos Islands, and the Antilles, and Operation TRAMPA II in the Caribbean and the Gulf of Mexico.

DEA is also actively participating in President Reagan's eight point program to combat organized crime and drug trafficking, along with the FBI, the IRS, the BATF, INS, the U.S. Marshals Service, Customs, and the Coast Guard. DEA personnel are actively involved in the 12 Organized Crime Drug Enforcement Task Forces (OCDETF). These Task Forces are focused on those levels of organized crime drug trafficking enterprises that direct, supervise, and finance the illicit drug trade. By the end of November 1983, 274 DEA agents had actively participated in 317 OCDETF cases, 773 arrests had been made, 180 individuals had been convicted, and approximately $25.8 million dollars in trafficker assets had been seized. Because these task forces are focused on those levels of trafficking organizations that actually direct and finance operations, their successes can have paralyzing effects on these components of organized crime.

Another cooperative effort with state and local law enforcement personnel is our State and Local Task Force program. This program, in contrast to the OCDETF effort, is aimed at the mid-level violator. Currently there are over 20 formal operational DEA/State and local task forces in metropolitan areas, including Guam. These task forces have an overall conviction rate of 98% and have consistently resulted in over 2,000 arrests per year. About 30% of these arrests are in Class I and II case categories.

In order to strengthen State and local efforts against drug trafficking organizations, DEA also provides training to state and local law enforcement officers. Approximately 5,000 officers per year are trained through the Academy at Glynco, Georgia and by DEA Division Training Officers.

Although our domestic enforcement efforts against drug trafficking have resulted in demonstrable progress, it is important to also address the world-wide nature of this problem. Controlling drugs within the source country, or as close to the source as possible, is the most effective approach to reducing the vast majority of illegal drugs in this country.

Drug Control is an international issue. Source and transit countries that previously did not have abuse problems have recently begun to develop severe internal drug addiction problems. Terrorism, crime, violence, and economic disruption are affecting the drug source countries, as they have affected some of the countries where drugs are abused.

DEA has long enlisted the cooperation of source and transit countries to eliminate illicit drug production, trafficking, and the diversion of licit drugs into illicit channels. We support numerous host country efforts to investigate drug trafficking organizations and to interdict drugs at the source. We have had some notable successes, especially in our diversion control and our foreign cooperative investigations programs.

The Foreign Cooperative Investigations Program motivates and assists

FOREIGN COUNTRIES IN THE DEVELOPMENT OF DRUG LAW ENFORCEMENT AND ANCILLARY PROGRAMS. IN FY 1983, AS A RESULT OF THESE EFFORTS, THERE WERE 1,250 COOPERATIVE ARRESTS OF INTERNATIONAL DRUG TRAFFICKERS, SEIZURES OF 2,368 KILOS OF HEROIN AND 7,819 KILOS OF COCAINE, IMPLEMENTATION OF 30 SPECIAL FIELD INTELLIGENCE PROGRAMS, AND TRAINING OF 1,240 FOREIGN GOVERNMENT OFFICIALS IN DRUG ENFORCEMENT METHODS. AN IMPORTANT ASPECT OF THIS PROGRAM IS THE DEVELOPMENT OF SUBSTANTIVE ENFORCEMENT AND INTELLIGENCE EXCHANGES.

DEA'S SPECIAL PROGRAMS TO CONTROL DIVERSION OF LICIT CONTROLLED SUBSTANCES INTO THE ILLICIT MARKET OPERATE EFFECTIVELY AND HAVE A POSITIVE IMPACT ON THE OVERALL DIVERSION PROBLEM. WE HAVE BEEN INSTRUMENTAL IN PERSUADING FOREIGN GOVERNMENTS TO CONTROL THE PRODUCTION AND DISTRIBUTION OF DANGEROUS PHARMACEUTICALS. BY THE END OF FY 1983, ALL KNOWN MAJOR EUROPEAN SOURCE COUNTRIES, AS WELL AS THE PEOPLES' REPUBLIC OF CHINA, HAD CEASED OR REDUCED METHAQUALONE PRODUCTION, AND HAD PLACED STRICT CONTROLS ON ITS EXPORTATION. THIS, AND THE REDUCTION OF THE METHAQUALONE IMPORT QUOTA, HAS RESULTED IN A DRAMATIC DECLINE IN THE U.S. IN INJURIES ATTRIBUTABLE TO METHAQUALONE ABUSE. THIS TREND IS EXPECTED TO CONTINUE.

DEA'S INTELLIGENCE PROGRAM PROVIDES ADEQUATE, TIMELY, AND RELIABLE INTELLIGENCE REGARDING DRUG TRAFFICKING TO THE LAW ENFORCEMENT COMMUNITY. IN FY 1983, WE ESTABLISHED A SPECIAL INTELLIGENCE UNIT TO COORDINATE INTELLIGENCE COMMUNITY INFORMATION. CURRENTLY, THE EL PASO INTELLIGENCE CENTER'S (EPIC) FACILITIES ARE BEING UPGRADED TO MORE EFFECTIVELY PROCESS AND STORE THIS INFORMATION. FORTY-EIGHT STATES NOW PARTICIPATE IN EPIC, AND IT IS NOW THE TACTICAL LINK between the South Florida Task Force, OCDETF, State and local task forces, DEA, FBI, Customs, the Coast Guard, and other Federal agencies.

This budget request for FY 1985 is for a total of $334,654,000, 4,438 permanent positions (2,210 agents), and 4,287 full-time equivalent workyears. These amounts include the transfer of Organized Crime Drug Enforcement (OCDE) resources as part of DEA's direct appropriation ($33,833,000, 337 positions, and 323 FTE), net program changes ($6,352,000, 22 positions, and 72 FTE), and net uncontrollable changes ($3,846,000, 5 FTE, and -4 positions).

This request continues the momentum of the drive against organized crime and drug trafficking. In so doing, DEA continues to stress the OCDE effort, the elimination of production in source countries, and participation in the Administration's intensified interdiction efforts. This budget request provides for the ongoing operation of DEA programs, and the recognition of resources required for new initiatives, as follows:

In support of the President's initiative against organized crime and drug trafficking, an increase of 35 permanent positions (of which 28 are agents), 32 full-time equivalent workyears, and $2,401,000 in funding is requested for the Organized Crime Drug Enforcement program to establish an additional Organized Crime Drug Enforcement Task Force (OCDETF) in Florida, the Virgin Islands, and Puerto Rico.

The Foreign Cooperative Investigation program motivates and

ASSISTS FOREIGN COUNTRIES IN THE DEVELOPMENT OF DRUG LAW ENFORCEMENT AND ANCILLARY PROGRAMS TO REDUCE THE SUPPLY OF ILLICIT DRUGS PRODUCED, PROCESSED, AND DESTINED FOR ULTIMATE DELIVERY TO THE UNITED STATES. AN INCREASE OF $2,775,000 IN FUNDING IS REQUESTED FOR THIS PROGRAM TO PROVIDE FOR 15 ADDITIONAL SPECIAL ENFORCEMENT OPERATIONS (SEOS), AND THE ESTABLISHMENT OF 23 SPECIAL FIELD INTELLIGENCE PROGRAMS (SFIPS).

THE DIVERSION CONTROL PROGRAM INVESTIGATES AND PREVENTS THE DIVERSION OF LEGITIMATELY PRODUCED DANGEROUS DRUGS. THROUGH THIS PROGRAM, WE HAVE BEEN ABLE TO PERSUADE FOREIGN GOVERNMENTS TO CONTROL THE PRODUCTION AND DISTRIBUTION OF DANGEROUS PHARMACEUTICALS. AN INCREASE OF 8 PERMANENT POSITIONS, 5 FULL-TIME EQUIVALENT WORKYEARS, AND $232,000 IN FUNDING IS REQUESTED FOR THIS PROGRAM FOR THE PROCESSING OF THE INCREASED VOLUME OF DRUG REVIEWS FOR SCHEDULING.

THE INTELLIGENCE PROGRAM COLLECTS, ANALYZES, AND DISSEMINATES DRUG INFORMATION IN SUPPORT OF EFFORTS TO INTERDICT OR SUPPRESS THE ILLICIT MOVEMENT OF DRUGS. AN INCREASE OF 36 PERMANENT POSITIONS, 30 FULL-TIME EQUIVALENT WORKYEARS, AND $1,292,000 IN FUNDING IS REQUESTED FOR THIS PROGRAM. THIS INCLUDES 23 POSITIONS, 17 FTE, AND $714,000 TO INSURE THAT DEA HAS THE CAPABILITY TO INTERACT MORE FULLY WITH THE INTELLIGENCE COMMUNITY, AND 13 POSITIONS, 13 FTE, AND $578,000 TO PROVIDE INTELLIGENCE SUPPORT TO THE OCDE TASK FORCES.

AN INCREASE OF 8 PERMANENT POSITIONS, 5 FULL-TIME EQUIVALENT WORKYEARS,AND $3,270,000 IN FUNDING IS REQUESTED FOR THE SUPPORT OPERATIONS PROGRAM TO BE USED FOR ADP/TELECOMMUNICATIONS INITIATIVES TO SUPPORT OPERATIONAL PROGRAMS.

THERE CAN BE NO DOUBT THAT THIS ADMINISTRATION IS COMMITTED TO THE ELIMINATION OF DRUG TRAFFICKING AND ORGANIZED CRIME. AS THE LEAD AGENCY IN THIS EFFORT, DEA HAS A VITAL MANDATE TO BRING DRUG LAW VIOLATORS TO JUSTICE, TO IMMOBILIZE THEIR ORGANIZATIONS, AND TO SEIZE THEIR FINANCIAL PROFITS AND PROCEEDS. OUR CHALLENGE IS TO UTILIZE OUR RESOURCES EFFECTIVELY AND IN SUCH A WAY AS TO MAKE THE COSTS AND RISKS OF DRUG TRAFFICKING OUTWEIGH THE PROFITS.

THE OVERALL EMPHASIS OF DEA'S ENFORCEMENT PROGRAM IS ON THE FLEXIBILITY TO RESPOND TO CHANGING SITUATIONS AND TO BRING SPECIAL EXPERTISE TO BEAR ON A PROBLEM. WE EXPLORE MANY INNOVATIVE ENFORCEMENT TACTICS TO BRING PRESSURE ON THE DRUG TRAFFIC. MANY OF THESE INVOLVE THE MAINTENANCE OF ENHANCED WORKING RELATIONSHIPS WITH OTHER FEDERAL, STATE, AND LOCAL AGENCIES. WE SHALL CONTINUE TO STRESS THE IMPORTANCE OF COORDINATED AND COHESIVE INTERAGENCY EFFORTS. IN THESE AUSTERE TIMES, WE HAVE ALL RECOGNIZED THE NEED FOR FURTHER ENHANCEMENT OF COOPERATIVE ENDEAVORS.

THIS CONCLUDES MY STATEMENT, MR. CHAIRMAN. I SHALL BE PLEASED TO ANSWER ANY QUESTIONS YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MIGHT HAVE.

CHANGE IN OCDE FUNDING METHOD

Senator RUDMAN. Thank you, Judge Webster.

I believe there are several questions that both of you might respond to, and then there are some questions which are addressed particularly to the FBI and others for Mr. Mullen. Why don't we proceed in that way. There will also be some questions I am going to submit for the record.

We funded a separate OCDE appropriation for 2 years. This was designed to focus resources on a particular problem. Now, in 1985 you are requesting those resources for each agency.

What is the reason for that? Is this an indication that the original approach was not working?

Judge WEBSTER. We had always intended it to be that way. Our Justice Department decision was made early on. This would be a way of funding at the beginning to be sure we got off to a good start; and the appropriation was appropriately allocated to each agency and to use them the appropriate way. Last year the Treasury Department received its own allocation directly. We are now moving within the Justice Department to a more efficient means of controlling the budget.

Senator RUDMAN. You don't think that the financial control is going in any way to detract from the focus?

Judge WEBSTER. The working group still makes the policy and oversight judgments. It is just an internal accounting process that is far more efficient.

Mr. VAN STAVOREN. Part of the budget structure will continue to gather information through data so we can put together some of the data for the Department.

PURITY AND PRICE OF HEROIN

Senator RUDMAN. You had a lot of success in the last year, yet we see an increase in the retail purity of street-level heroin and a drop in retail prices. What is the reason for that, to the extent that you can explain it?

Mr. MULLEN. In 1981 and 1982 we saw an increase in the purity. You are talking about heroin purity, though the price was stable. We have never reached the high levels of the mid-70's. The price of heroin is much higher, the purity still remains much lower. Deaths and injuries were higher in the mid-70's. I believe the reasons for this were the bumper crops in the past 3 years in Southwest Asia, Southeast Asia, and in Mexico, which resulted in an abundant supply. It is my personal belief that, except for enhanced law enforcement efforts, we would be seeing an epidemic of much greater proportions.

Senator RUDMAN. It is hard to get a benchmark from which to measure. Some figures indicate that the price is somewhat down and the supply is pure; but that doesn't take into account what they might have been.

Mr. MULLEN. That is right. We seized about 40 percent more heroin in 1983 than in 1982 which shows some success on the part of the enforcement. What would have happened had that heroin been on the street?

A COCAINE SEIZURE

Senator RUDMAN. What is the value of the seizure in the Rosenthal case? How many tons?

Judge WEBSTER. That was cocaine.

Senator RUDMAN. How much did you seize?

Mr. MULLEN. Most of that was seized in the United States, about 10,000 pounds and the street value would put that over a half billion dollars.

Senator RUDMAN. That is an enormous sum.

Judge WEBSTER. Your question is on the very recent seizure in Colombia. Not too much can be said publicly, but it was an extraordinary operation and probably accounted for 20 percent of the annual cocaine production in Colombia.

DIFFERENCES IN RADIO EQUIPMENT

Senator RUDMAN. Let's talk briefly about the discussion we had last year concerning the disparity between communications systems. It is not disparity, it is totally different—VHF and UHF. I understood the reason the Bureau wanted to maintain its own network. You did mention that both agencies would have to find an economical and efficient way to interlink communications. Yet, you are continuing totally to revamp your radio communications and to make large purchases of voice privacy systems with the FBI on VHF and the DEA on UHF

Are you going to change that, or do you think that is the way to go?

Judge WEBSTER. We have narrowed the options. The options are to exchange radio equipment when we are working investigations together, to go either to UHF or VHF, or to purchase equipment which is mutually compatible. The recent technology capability is just about on the shelf. We have been studying these very carefully. We know that because of the very large investments that FBI has made, we cannot shift from VHF to UHF. It really comes down to two options that Bud and I have been working on to resolve on the basis of cost and effectiveness: whether DEA should shift from UHF to VHF; and whether we have the capacity to supply their needs; or whether we should incur additional expense of having radios which can go either UHF or VHF. We are coming down closer to the wire on that. I don't think we are wasting any of the Government's money at the present time because a lot of the improvements and replacements will integrate with each other.

Senator RUDMAN. Some of the police agencies around the country have found that the least expensive method would be by simply adding other radios for those units that might have the need.

Judge WEBSTER. We won't have to add another radio. We are interested in voice privacy which is also greater capability than exists in law enforcement today. But these costs are being analyzed and we are very close to making that kind of decision.

IMPACT OF THE GS-11-15 INITIATIVE

Senator **Rudman**. Let me talk about the Grace Commission at the moment. That word "Grace" is used around here lately almost with religious fervor.

I read the document, and I think a lot of it is not going to work; a lot of it will, but a lot, I think, is very cursory. You stated that you are going to participate in the initiative. One of the things that the report stressed is that there should be an overall reduction in the number of GS 11–15's, yet your agents are GS–11-15.

Wouldn't that initiative be totally inapplicable to the FBI?

Judge **Webster**. We hope it will be inapplicable. Your career service does not predicate itself on how many slots we have for experienced agents and we want that career opportunity to be able to attract the individuals who can make major cost-effective contributions to the system.

PROCEDURES FOR SHARED INTELLIGENCE

Senator **Rudman**. This is the last joint question.

Last year there was testimony here that the FBI and the DEA were working on some procedures to share intelligence. I wonder how far along that is. I know it is a very difficult problem. That was a year ago; are you any closer to agreement?

Judge **Webster**. It is much less difficult between the two agencies than it is when we get into sharing that with other agencies. We are supplying the data for the NADDIS system run by DEA. We have become especially effective in El Paso where we took longer than I would like to see, but we have a telex in place in El Paso, we put an Organized Crime Information System terminal in our El Paso office which is very secure. We have it there minutes away from the EPIC and other avenues requiring sharing of any kind of information at field office to field office or division to division.

Senator **Rudman**. You probably both have somewhat different rules as to third parties you might share information with.

Mr. **Mullen**. It does become a problem. For example, our information system is strictly for internal use whereas our NADDIS system is more accessible to the local enforcement. From DEA's part, we are very satisfied with having the FBI now at the El Paso Intelligence Center. We have the NADDIS terminal and access by FBI.

Senator **Rudman**. The answer then, in terms of sharing between the two agencies, is that you have come quite a ways since last year, but still have to be fairly sensitive to the problems of third party sharing.

I have a number of questions, but I don't know if I am going to ask them all.

WHITE-COLLAR CRIME PROGRAM

Explain to us why your white-collar crime program is one of your top priority investigative activities, yet it also shows a reduction of 115 agents and 70 support workyears—the only reduction in your field programs.

Judge WEBSTER. It is partly a sense of the Department's wanting to maintain some effort to not just expand without looking for ways to control other areas where there was some underburning. Unfortunately for us, there was underburning, but it had nothing. to do with the quality of the work. When we were asked to get in the drug business, we had to draw on existing resources. Until the drug task force appropriations came along we had no additional money. We had to draw away from those programs least affected and in the field that seemed to come out of the white-collar crime program. If we pulled at the level we did when we made our move into the drug field out of any of the other programs, I think some of these programs might be terminated in particular field offices. So it shows up as underburning in the white-collar crime program.

One of the penalties of having an advanced tracking system such as we have in our RMIS computers, we can quickly determine the burn rate. So, it became obvious to those who were watching from a different perspective, that we were not fully burning white-collar crime. The reason is, we were doing additional work with no additional resources and we were pulling off the bottom of the white-collar crime, but with 89 percent priority casework, there is not very much that we could pull off. The work is there but the resources weren't.

IMPACT OF A SPENDING FREEZE

Senator RUDMAN. Recently, there have been as many budget balancing and debt-reduction plans as there are Members of the Senate—a slight exaggeration, maybe only 96—and one was the discretionary spending freeze as part of the so-called downpayment. All the details have not yet been worked out.

If in fact that were to happen and you were limited to this year's budget request, how would you deal with that? You probably answer, with great difficulty.

Judge WEBSTER. Everyone answers the same way.

Senator RUDMAN. What would you specifically have to do?

Judge WEBSTER. We have to approach those increments that we had requested and pull back from organized crime and foreign counterintelligence. It would include pulling back from the needed expansion of our Quantico facility and it would include some deferrals or reductions in automated data processing.

Our experience has been that every time something is deferred it costs almost twice as much when we do get to it, and it is not cost effective to keep putting off those improvements. We save the Government money when we are able to move.

POLICE TRAINING IN OTHER COUNTRIES

Senator RUDMAN. Last week we had the Secretary of State here, and one of the subjects that I discussed with him was amending section 660 of the Foreign Assistance Act that prohibits the use of training of police in other countries. There was a good reason for that. Back in 1974, when that amendment was passed, there was a concern that police training in some of these countries could end up with the police being used for political purposes. Today, it seems to many of us that we have to rely on local police for the protection of our embassies. We have a few Marines, but the fact is in terms of terrorism in the local area, and assaults on our embassies, it is important to depend on those folks.

As you know, the FBI is exempt from Section 660. The justification, you indicate, is that you operate a Caribbean Police School. In the last 2 years, you trained 94 mid-management officers from Puerto Rico and the U.S. Virgin Islands, and 60 from 11 different foreign countries.

I thought it might be helpful for the record if you or one of your associates can tell us about the kind of training, which of the countries, and why it was established in the Caribbean. Do you think this has proper safeguards to avoid the kinds of things about which there are some concerns?

This might be helpful to this committee because we intend to oversee language which might modify section 660 so that we might do a better job in some of these countries.

POLICE TRAINING IN THE CARIBBEAN

Judge **Webster**. We will be happy to, Mr. Chairman. We support police training in the Caribbean. And, in addition to the police, the Caribbean police, we have sent representatives to El Salvador through the State Department and the Justice Department, to enhance the police and law enforcement capability in that country. Costa Rica has asked for a multicountry program in that area. We have seen the benefit of police training in the islands, such as the Virgin Islands and Puerto Rico, and we believe that one answer to stability in those fairly new countries—not Puerto Rico—is a good professional law enforcement group, not an army of the government for repression, but one that investigates crime, solves crimes, and leaves the citizenry confident that they are not at risk if they cooperate with a system.

So, we have introduced a number of traditional subjects in our police training school in the Caribbean. I might say, we are now in a position where we can teach these courses in Spanish, the native language, so we don't have that additional obstacle. We taught such courses as collection and moving of evidence, felony car stops, operating procedures, crime-scene search, interviewing, narcotics matters, white-collar crime, case management, communication, construction development, photography, fingerprint management, homocides and bombing matters.

As a matter of numbers, in the Caribbean School which was offered twice in 1982 and twice in 1983 and once in 1984, we have had 116 participants, 20 from Puerto Rico, 11 from Jamaiça and the islands of Antigua, Barbados, Bahamas, Dominica, Montserrat, St. Kitts, St. Lucia, St. Vincent and Tobagó, Honduras, Costa Rica, Republic of Dominica, Panama and participants from U.S. Navy and Army stationed in those areas.

It has been a successful effort and I think the State Department has recognized what we are doing here.

You mentioned terrorism. We have not taught counterterrorist activity. Our concern is that we don't want to develop a terrorist kind of capability by teaching people how to combat it. Some of these countries have a way of having ins and outs. So, unless we were instructed to do that, we would keep our instruction in the other area. However, I think those with the ability to deal with crime build confidence and stability of a government and reduce the risk of the kind of insurrection and disillusionment.

Senator RUDMAN. The school and all of the kinds of things you are talking about in terms of actual operation; you don't want to teach the kind of thing you are doing in Quantico to outside forces for obvious reasons, but we are concerned about the fact we ought to do some investigation.

Judge WEBSTER. We know when we go in to the Virgin Islands and send investigators in, we solve crimes they were not able to solve. We bring them back and teach them at Quantico. Now we have the capability of teaching them there in their own language and that, we think, will help.

COVERAGE OF OLYMPIC GAMES

Senator RUDMAN. Let me ask one other question and then I will yield to my colleague.

Are you creating a special task force for the Olympic Games or are you going to run that out of your Los Angeles office? What special problems do you think you are going to have and what can we do to help you?

Judge WEBSTER. I think we are in pretty good shape. Our authority derives from the Executive Order of the President designating the Attorney General as the coordinator for Federal law enforcement responsible for terrorism and a National Security Decision Directive indicating that unless the Attorney General ordered otherwise, the FBI will be the principal Federal agency for dealing with it.

The Federal agencies themselves have been meeting on a regular basis, some seven different coordinating groups relative to counterterrorist programs and a workable federalist system has evolved with respect to the Olympics. I underscore the word "federalist" because it is sometimes overlooked that as a Federal agency we do not have authority over State and local enforcement agencies and they will play a crucial role out there. Some 24, 26 local agencies have jurisdiction across 135 miles of athletic events, the principal one is the Los Angeles Police Department, a superb organization, along with the Sheriff's Department also a top-quality office. We recently signed a Memorandum of Understanding with the Los Angeles Police Department which in large measure points the way to the understanding that we have between Chief Gates and myself as to how we would resolve a question of transfer of authority in a critical situation. We are not planning only for the Olympics but also the World Fair in New Orleans and the Republican and Democratic Conventions this year. We have been training out there.

Our philosophy there is that terrorist-type incidents can best be handled on scene and we have established a command system, a network of intelligence sharing between agencies in the Los Angeles area, with a crisis center as well as the facilities of the FBI. We are planning for a wide variety of kinds of terrorist activities which will be beyond mere hostage taking but assassinations, bombings, and so on. The Hostage Rescue Team will be on the scene, a team of 50 highly trained special agents to provide a strong civilian response capability. The Los Angeles Police Department has had for a number of years a very effective SWAT team. We have met with the various law enforcement agencies and discussed gaming situations, logistics, transportation, movement of people and so on, and the Department of Justice is considering peripheral aspects about civil unrest and disorder, although there is no reason at this point to anticipate that kind of problem.

There are other complications, such as the presence of the Soviet ship in the harbor, matters that have to be dealt with by other agencies.

But, I think the coordination is satisfactory. The money that is being spent is being well spent.

Senator RUDMAN. The team evidently is now on line ready to be deployed?

Judge WEBSTER. Yes, sir. Everything is complete, although they are staying in a state of training readiness.

Senator RUDMAN. I am going to yield to Senator Specter. I know of your special problems; if you would like to leave at the end of Senator Specter's questions, you may.

Judge WEBSTER. That is kind. I think at this point I am all right.

Senator SPECTER. Thank you, Mr. Chairman.

Judge Webster, at the outset, I compliment you on the outstanding job you have done and I compliment you on your leadership.

FEE FOR IDENTIFICATION SERVICES

I have a few questions this morning, Judge Webster. One relates to some efforts the Juvenile Justice Subcommittee is undertaking to have records checks run on people who work with juveniles. Our investigations have shown that many people who work with juveniles have criminal records for sexual assaults and pose a real problem for juveniles in detention. I am told there are various State agencies that have not taken advantage of our identification service because of the $12 fee and a delay in processing fingerprint cards of some 10 to 12 days.

My question is, would it be possible to eliminate that fee, perhaps, if we could find some extra dollars or if you could reallocate resources and expedite that time to encourage people to use that identification system?

Judge WEBSTER. If I can talk about the reimbursable side of our program in general terms because I am not aware of how big a problem the one you are talking about is, there are others that have the same interest.

The reimbursable approach to identification was an administration initiative and was designed to ask those in the non-law enforcement community, in the licensing groups, the bankers, to help in sharing this cost. I was not aware that the bankers were having any trouble coming up with the money. We had fallen by 1981 to about a 30-workday response time, not only for a check such as you alluded to but for ordinary fingerprint requests from police departments throughout the country. We were underfunded in the Identification Division and we were trying mightily to catch up. It took extraordinary measure to do this but we decided that we had to put a moratorium on non-law enforcement requests for 1 year, which we did.

We took that time to catch up on our backlog and came back with a reimbursable system, exactly on schedule. We stopped in October 1981 and came back on October 1, 1982. We had reduced the time factor to 10 workdays which we thought was good because we had been up to 30, and that was intolerable, without any additional budget funds.

Senator **Specter**. I have several other questions. What I would like to request that you do is take a look at the requests which you have for identifications as it relates to juveniles in detention and to see if there would be some way to waive that fee and reduce the time on a priority basis. If you would let me know about that, I would appreciate it.

CAREER CRIMINAL

I have a couple of questions on career criminal aspects, Judge Webster.

A number of us have been trying to focus on career criminals in the country and to bring some Federal leverage to bear on that by legislation directed at career criminals.

As I understand it, on the famous FBI 10 most wanted list, those people are identified, at least to some extent, not necessarily on the basis of direct Federal crimes, but drugs or organized crime, or murderer or interstate trafficking. So, the FBI is much concerned about career criminal as a class.

It has been estimated as a result of work done by the National Commission on Criminal Justice Standards and Goals, which I served on in 1973, that if we could identify the career criminals in this country—it is a hard judgment call as to how many there are, estimates range from 200,000 to 400,000 career criminals who commit a burglary or two a night or rob once or twice a day—and incarcerate them, which would take more prison facilities, that we might reduce violent crimes, robberies, and burglaries by as much as 50 percent in the country.

I would be interested in your judgment as to the likelihood of obtaining a significant reduction of violent crime, if we can identify and incarcerate these career criminals.

Judge **Webster**. I don't think there is any question if we identify appropriate steps to confine them or get them off the streets, we would see a significant reduction in the crime records; these are recidivists of the worst kind.

We are in the process of setting up a National Center for the Study and Analysis of Violent Crime at the FBI Academy in Quantico with the help of the Justice Department and other interested agencies by which means we hope to be able to identify through computerization of data, the multiple killers, multiple rapists, people who engage in multiple crimes of the more violent nature. There would be a byproduct of this and that is our behavioral scientists will be able to develop a certain kind of profile as they have done so successfully today in connection with homicides such as the Atlanta killings.

It would help identify the people you are talking about and help us understand where they are coming from and what type of conduct and background will motivate. And the third feature, legislation to make it more difficult for them to get out on the street after having been identified as career criminals.

Senator SPECTER. Thank you, Judge Webster. I wanted to come by and pay my respects. It goes without saying the fact there are no more Senators present is in no way a comment on the report of your work. Former prosecutors like Senator Rudman and I have an extra special interest in what you are doing and I wanted to be here to lend support to it and ask you those few questions.

Judge WEBSTER. Thank you.

INFORMANT GUIDELINES

Senator RUDMAN. I did have one last question. We talked about this privately, but you might update us on how well the guidelines are working on the various undercover operations underway in terms of control of informants.

Judge WEBSTER. In my opinion, the guidelines have functioned well for us. We have always taken the position that guidelines are guidelines not statutes. The purpose of having guidelines is to permit us to improve on them as the need develops and we have looked at them in that way. The domestic security guidelines were in fact modified as well as some provisions of the general crimes to make a more symmetrical approach to law enforcement.

Out of those changes, I think we have seen a greater clarity. The investigator on the street doesn't have to make about 60 different mental categorizations, balance four things. It is a consistent pattern, particularly with respect to the great problem we face today and that the enterprise or the groups, whether we are talking about racketeers or whether we are talking about terrorists, those improvements have materially assisted our work.

What we are looking at right now, and I only respond to your questions so that you will know that we are thinking about it, we are looking at comparisons between guidelines which shape the investigations by the DEA and guidelines which guide the FBI. Now that we are doing substantially similar things at least in one area we think there ought to be possibly a greater consistency in the guidelines. They are substantially different in some areas such as handling informants, undercover, and so on. We are looking at—not saying they should be or let's do it their way because they are less restrictive—but which rules make the most sense in the light of our combined experience and then we will come back to have oversight committees.

Senator RUDMAN. It sounds to me that there is a great deal of attention being paid to those. That was probably the single, best result of those hearings. It was very difficult to have any kind of law enforcement for the problems that existed.

Judge WEBSTER. I told you, and I have no reluctance to placing it on the record, that at the time of the Greylord investigations which are currently in prosecution so we shouldn't discuss the details, but having to do with corruption in the judicial system in Cook County, when the undercover operations came down, I then asked that the investigation which had been underway for about 3 years in two administrations be reviewed from the standpoint of those recommendations that came from the committee in the field, and then reviewed at headquarters particularly on the issue of predication. I was very pleased to see how far we had come in moving toward the general direction and improving the full effectiveness and management controls that came out of it.

NARCOTICS INVESTIGATIONS

Senator RUDMAN. Let me turn to a couple of questions on DEA.

Last year, you may recall, there was statutory authority given to Customs to follow up investigations where they made a seizure which was dropped when it became a continuing resolution.

What is your opinion or the administration's position? Obviously, you can't follow up on every port seizure that Customs agents make. If they were to conduct followup investigations with proper consultation notification, would there be more problems created than what they are trying to solve? Is that something we want to do? Is that what we are doing?

Mr. MULLEN. I am sure you are aware of the pre-1973 fragmented Federal effort. That is the reason why we have the DEA today. Customs has a key role in major interdiction efforts and wanted to reacquire jurisdiction in the title 21 area in Federal narcotics investigations. We did not want to return to those pre-1973 problems, so we have solved the problem by having the Attorney General delegate authority to another Federal investigative agency to conduct title 21 investigations. He has delegated that authority to me. We are working with Customs under a program whereby the Customs agent in charge of a given area submits a name to DEA and we grant jurisdiction on a selected basis to specific agents for specific periods of time. These agents work under DEA supervision and that ensures a cohesive effort. It seems to be working well.

Senator RUDMAN. We don't want to go back to the fragmented effort of the past. Obviously, if Customs makes major interdiction in a particular area with people familiar with local problems and players, as long as they are controlled by some central authority.

Last year when you testified you said that DEA contributed substantially to the original south Florida task force. That task force has been classified as an interdiction force, and you are establishing a 13th organized crime drug enforcement task force to cover Florida, the Virgin Islands, and Puerto Rico.

Do you still participate in the original interdiction task force? If not, where were the resources transferred to?

Mr. MULLEN. We still are heavily involved in the task force. We have about 26 agents and Customs has about twice that number. This task force is dedicated to following up on interdiction cases and is somewhat different from the Organized Crime Drug Enforcement Task Force which is dedicated to organized crime at the highest levels, financiers and so forth. It could well be that as a case developed, the interdiction task force would refer it to the OCDE group to be developed into a complicated high-level investigation.

SUBMITTED QUESTIONS

Senator RUDMAN. I think there are a number of questions here that Chairman Laxalt wants answered for the record and I will submit those for the record. We probably have half a dozen questions for you, Mr. Mullen and Judge Webster. We are going to keep the record open here until May 1. We appreciate your being here. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

FEDERAL BUREAU OF INVESTIGATION

Potential Economic Loss Prevented

According to your justification, your Organized Crime program resulted in $22,103,767 in Potential Economic Loss Prevented (PELP). How is this figure determined and what does it measure?

Potential Economic Loss Prevented (PELP) is a category used by the FBI to document the prevention of economic loss to the business community by the seizure of counterfeit items (i.e., sound recordings or motion pictures, negotiable instruments, stocks, bonds, etc.) prior to their introduction into commerce where such introduction would infringe upon an individual's or company's vested interest in the value of the item. Additionally, PELP captures the economic loss prevented by aborted demands of extortion, bribe or ransom and theft from or fraud against the Government schemes.

PELP is reported by each FBI field division within 30 days from the date of the accomplishment. The PELP accomplishment is determined by the face value of the counterfeit instrument that is recovered. In the case of counterfeit or pirated sound recordings or motion pictures, PELP is based upon the expected retail price. In cases where extortion, bribe or ransom demands were thwarted, PELP is determined by the amount of the demand.

Employee Turnover - Fingerprint Identification

According to the GAO report "The FBI Has Improved Its Fingerprint Identification Service," issued August 19, 1983, your fingerprint identification bureau has suffered from the problem of high employee turnover. According to the report, there was a 31 percent employee turnover in FY 1979, 21 percent in FY 1980, and 14 percent in FY 1981. What is the reason for employee turnover of this magnitude? What are you doing to reduce the rate?

Fingerprint card processing is a dull, repetitive, tiring task which causes high employee turnover. However, as indicated in your question, during the period between FY 1979 and FY 1981, the employee turnover rate was more than halved from 31 percent to 14 percent. This favorable trend continued during FY 1982 when the turnover rate went down to 12.4 percent and then rose slightly to 13.1 percent during FY 1983.

While the Nation's economy has an influence on employee turnover, we believe that personnel management initiatives taken since FY 1979 are largely responsible for the improved situation. Such initiatives included: establishment of flexible and compressed (four-day) work schedules; automation of many of the most dull and unchallenging work functions; upgrading of positions; training supervisors in modern management science; adopting measures to improve the comfortableness, cleanliness and safety of work and rest areas; and the adoption of a "people-oriented" versus a "work-oriented" management approach.

Freedom of Information Act Litigation

Does the FBI handle all its own FOIA litigation?

No. In almost all cases, the attorney of record for the Government in FOIA litigation involving the FBI is a Department of Justice attorney or an Assistant United States Attorney. However, agent-attorneys from the FBI's Legal Counsel Division prepare litigation reports for the Government, giving the factual background of each case, furnishing responses to every allegation in the complaint, and suggesting affirmative defenses based on current law. These agent-attorneys also coordinate the FBI's actions throughout the course of the lawsuit, ensuring affidavits and all other discovery responses are correct and each directive of the Court is complied with.

Working in coordination with the FBI's Legal Counsel Division, the Department of Justice attorney or Assistant United States Attorney prepares the necessary briefs and other documentation and appears in Court.

Domestic Terrorism Investigations

How many group and individual domestic terrorism investigations are you conducting compared to last year? Can you cite some recent accomplishments in this area?

Will domestic intelligence activities decrease as a result of the FBI's new emphasis on drug-related investigations?

On March 21, 1983, the new Attorney General Guidelines (AGG) for Domestic Security/Terrorism (DS/T) investigations went into effect. These investigations focus on enterprises whose goals are to achieve political or social change through activities that involve force or violence. DS/T investigations are concerned with the investigation of entire enterprises, rather than individual participants and specific criminal acts, and authorized investigations to determine the structure and scope of the enterprise, as well as the relationship of the members. Under the new guidelines there is only one level of investigation, that being a "full" DS/T investigation as opposed to the Levi guidelines, wherein there were three levels of investigation.

In 1983, there were 20 full DS/T investigations either authorized under the new AGG or "converted" from the previous (Levi) Domestic Security Guidelines. Two of these investigations were closed last year.

Since January 1, 1984, one full DS/T investigation has been authorized, one has been closed. There are currently 18 full DS/T investigations. At this point, there is no indication that domestic intelligence activities will decrease as a result of the new emphasis on drug-related investigations.

Recent accomplishments can be cited in an Fuerzas Armadas De Liberacion Nacional (FALN) investigation and the Provisional Party of Communists (PPC) investigation.

As a result of the intensive investigation of the FALN, the FBI identified two safehouses in Chicago and arrested four individuals in possession of semiautomatic weapons, homemade silencers, and explosives. These arrests prevented the FALN from carrying out planned bombings, robberies, and prison breaks. In addition, FALN leader William Guillermo Morales, who had been a fugitive since his escape from a prison hospital on May 21, 1979, was apprehended by Mexican authorities based on information received from the FBI. Morales remains in Mexico pending extradition proceedings.

The PPC is a self-described revolutionary communist party totally dedicated to revolution in the United States. The U.S. Government and all of its agencies are considered mortal enemies. Plans for a February 19, 1984 armed "takeover" of the U.S. Government were recently thwarted by the New York Joint Terrorism Task Force. Accomplishments from this investigation follow:

a. Investigation has resulted in the interdiction of a planned military takeover of the U.S. Government.

b. The seizure of various weapons, ammunition, and military paraphernalia.

c. Recovery of numerous documents which corroborated the plan for a military takeover by the PPC.

d. The identification of numerous members of the PPC across the country.

Investigation Statistics

What procedures are used to prevent the same accomplishment from being double counted when investigations involve more than one program category?

The FBI presently has 501 "classifications" and "subclassifications" of investigative, administrative, and training responsibilities. Each classification and subclassification falls within one of the following "programs:"

1. Antitrust Civil Matters
2. Applicant Matters
3. Civil Rights
4. Foreign Counterintelligence
5. Fugitives
6. General Government Crimes
7. General Property Crimes
8. Organized Crime
9. Personal Crimes
10. Terrorism - Domestic
11. Terrorism - International
12. Training Matters
13. White-Collar Crime
14. Miscellaneous Matters

Each classification is numbered and the subclassifications are assigned a letter in addition to the number. For example, kidnapping cases are classification number 7, thefts from interstate shipments are 15A-F matters, bank robberies are 91A-Es, racketeer enterprise investigations are 92A-Cs, and so on. The classification number becomes part of the case file number. File number "7-123" would be the 123rd kidnapping matter within a field division.

A case can be opened in one, and only one, classification regardless of how many other classifications are involved. When a case involves more than one classification, this fact is acknowledged in the case "character" which is shown on the last line of the case title. The case character of a bank robbery committed by terrorists would appear as "BR; DS-TER," but the file number would be 91A-XXXXX- the bank robbery classification.

All accomplishments reported in a case must contain a file number. The computer will accept only one file number and computer edits prevent duplication of accomplishment claims on the same case. To receive credit for the same accomplishment in two different programs would be highly improbable because it would require the submission of a second Accomplishment Report (Form FD-515) under a completely different file number. If such an action should happen, it would be discovered when an attempt is made to file the second Accomplishment Report (FD-515) in a non-existent or erroneous case file. It is also pointed out that the Inspection Division has a detailed audit program for verifying accomplishments during its inspection of field offices.

White-Collar Crime Program Decrease

The FBI is proposing a decrease of 191 positions in the White-Collar Crime program. How is this reduction expected to affect FBI fraud against the Government investigations? Because of shared jurisdiction with Inspector General organizations in this area, does the FBI expect the IGs to assume larger responsibilities for these investigations?

Governmental fraud investigations are the top ranked priority within the White-Collar Crime Program and FBI field managers have been instructed to afford priority to these matters. Fraud against the Government investigations will continue to receive priority attention, however, the decrease of positions will result in a reduction of investigative activity in Financial Crimes matters. Memoranda of Understanding executed between the FBI and the various Inspectors General clearly delineate the respective investigative responsibilities and it is not expected that the Inspectors General will assume any larger responsibilities for investigations.

Fingerprint Card Submissions

Requests for fingerprint identification checks and other fingerprint card submissions are expected to grow from 6.25 million in FY 1983 to 7.12 million in FY 1985. However, crime rates are dropping, fewer non-Federal applicant cards (state employment/licensing, banks) are being received, and the use of the Interstate Identification Index (a non-fingerprint card system of determining criminal history) is growing. What are the reasons for estimating increased fingerprint card submissions?

Although crime rates have been decreasing in recent years, the actual number of arrests has been increasing. The crime rate decreased about six percent from 1980 to 1982, while arrests increased by almost 1.7 million.

Because of the greater emphasis now being given to law enforcement (particularly in curbing illegal drugs and drunk driving), the trend toward increasing arrests should continue during FY 1985. More arrests translate into more fingerprint cards for the FBI's Identification Division to process.

The number of non-Federal applicant fingerprint cards received during FY 1983 was lower than expected because of the slowness of some states to obtain authority and/or set up accounting systems for handling the user fees which the FBI began charging that year. As these states correct such situations, the volume of non-Federal applicant submissions is increasing. It is anticipated that in FY 1985 non-Federal applicant receipts will exceed those of FY 1983 by nearly 400,000 cards.

The use of the Interstate Identification Index (III) is growing and will have an effect on fingerprint card submissions. It is estimated that in FY 1985 the III will handle approximately 100,000 record requests where fingerprint cards would have normally been submitted for processing. This figure was taken into account in the projection of fingerprint cards to be received in FY 1985.

Unidentified Persons File

On June 30, 1983, an Unidentified Persons File was established in the National Crime Information Center pursuant to provisions of the Missing Persons Act of 1982. How many positive identifications have resulted from the use of this file?

A positive identification has not resulted from the use of the Unidentified Persons File. As of April 2, 1984, 234 records have been entered by 34 states. It is anticipated that the number of records entered will increase as local and State agencies make more use of this file.

Drug Enforcement Priorities

How is the drug enforcement priority set in relation to the resources available for other activities such as organized crime, white-collar crime, terrorism, and foreign counterintelligence?

The narcotics program of the FBI is an integral part of the FBI's organized crime program. The organized crime program is one of four investigative priorities, the others are the foreign counterintelligence, white-collar crime and terrorism programs.

This program ranking has been consistent since January 28, 1982, when the Attorney General formally assigned the FBI concurrent Controlled Substance Act, Title 21 jurisdiction. The emphasis placed in the narcotics area is evident from the dramatic rise in FBI participation since January 1982. The number of narcotics-related investigations have increased from slightly more than 100 just prior to January 1982 to more than 1,700 cases as of April 1, 1984. The number of agents assigned to narcotics matters now exceeds 1,000 on an annualized basis. This represents approximately 16 percent of the FBI's field agent workyears on investigative matters. The entire organized crime program represents approximately 25 percent of the FBI's agent investigative efforts.

Security - Los Angeles Olympics

Please explain the Memorandum of Understanding between the FBI and the Los Angeles Police Department (LAPD) concerning Olympics security. How does it differ from agreements with the other state and local law enforcement agencies involved? How will disagreements be resolved -- especially considering the difficulty you have had in resolving previous differences? (Incident at the Spanish Consulate on August 16, 1983, and hijacking incident at Los Angeles airport in 1981.)

The Memorandum of Agreement between the FBI and the LAPD covering Olympic security, as signed on February 28, 1984, sets out areas of both exclusive Federal jurisdiction and concurrent Federal and local jurisdiction. The LAPD is charged with the initial response at an incident, except those occurring exclusively on designated Federal property. If an incident occurs which involves an issue of national security, or involves a negotiation process which exceeds the capability of the LAPD, then a transition of command can be requested by either party, but it will not be made until there is concurrence by the two commanders in charge. Investigations under the Protection of Foreign Officials Statute, (Title 18, U.S.C., Section 112) will be initially handled by the LAPD, and "follow up" investigations will be concurrent. Although not specifically provided for in the agreement, any disagreement will be resolved as quickly and efficiently as possible through consultation with the LAPD Chief, the Special Agent in Charge of the FBI office in Los Angeles, the Director of the FBI, the Attorney General, and ultimately, the White House.

This agreement differs in its detail from the previous agreements regarding the Olympics. The original MOUs are more specific in dealing with the areas of jurisdictional and command responsibilities, change of command procedures, and incident and response classifications. It is also the intent of the original MOUs that, should an incident occur which affects the ability of the U.S. Government to conduct its foreign affairs, the FBI will assume the lead role as expeditiously as possible.

The FBI is confident that through these agreements and through its day-to-day working relationships with all of the outstanding law enforcement agencies involved, it has established the proper mechanisms and relationships to handle any incident with occurs during the Olympics, and these agreements and relationships will be fully and successfully used when necessary.

How much has the FBI spent preparing for the Los Angeles Olympics? Total costs? 50-member hostage team? What will be usable after the Olympics and how will it be used? Why do we need an FBI hostage rescue team when LAPD and the military both have trained teams?

No formal cost breakdown for all of the FBI's expenditure is currently available, but the FBI has spent $369,275 in agent salaries directly related to the Olympics as of March 3, 1984. Approximately

$18,000 in travel funds for the HRT, approximately $80,000 in photography preparations, and approximately $31,500 for a Video-Disc Mapping System (VDMS) to be used in the event of an incident at the Games have been committed. Other expenditures included approximately $120,000 to renovate a wing of the Veterans Administration (VA) Hospital to be used as living quarters for FBI personnel during the Olympics and the preparation of a helicopter pad near that facility.

Most of the items purchased will be reusable after the Games, such as the VDMS and communications equipment. Some equipment will be left in Los Angeles such as the voice-privacy radio system, but other equipment such as certain communication and photographic equipment will be transferred to other FBI field divisions for special events and normal field operations. Cost data are being compiled on the matter and will be available at the termination of the events.

The FBI's HRT gives the President a civilian law enforcement alternative to the use of the military to respond to a terrorist incident. Although the Protection of Foreign Offices (PFO) Statute provides for concurrent jurisdiction between local and Federal agencies, any situation which involves national security or affects the ability of the U.S. Government to conduct its foreign affairs would dictate that the Federal Government take the lead role in responding to and managing that incident.

All of the existing antiterrorist teams in the world are organized and operated at the "Federal" level, since it is recognized that they are the best equipped to handle and successfully resolve the multitude of international implications and questions arising from a terrorist incident. The governments of the world would expect the United States to use a similar force, particularly where the protection of foreign officials and athletes is concerned.

However, should it become necessary to request military assistance, the FBI has the capability to immediately set this request in motion. There is a Memorandum of Understanding with the U.S. Department of Defense and U.S. Department of Justice which establishes the mechanism to make such a request, and provides for an orderly transition and control at the scene of the incident.

How much will be spent during the Games?

The FBI estimates it will incur cost of approximately $9 million on the Olympics. The majority of this amount will be for salaries and related personnel costs.

How will you coordinate with foreign security forces such as the Israelis, who plan to provide security for their own athletes?

The responsibility for controlling foreign security forces present at the Olympics rests with the U.S. Department of State (USDOS). The FBI is working closely with the USDOS to identify those countries which may bring their own security forces, and these forces will not be allowed to conduct any operations within the United States. All incidents will be handled by the responsible local or Federal agency.

GAO Report - ADP Systems

On October 18, 1983, GAO issued a letter report on the FBI's management of its automated information systems. Generally, the report praised the Bureau's efforts to manage its ADP systems. However, the report made two critical findings. First, it found that your FOIMS and BAS software programs needed independent quality reviews. Second, it found a lack of coordination between the several systems that will use the ADABAS data base management system.

Are these criticisms valid?

What do you plan to do to correct the deficiencies?

The GAO completed a review of the FBI's automated information systems in August 1983. GAO's stated purpose for the review was the FBI's growing investment in automated information systems and increasing reliance on those systems to support its operations. The GAO report entitled "FBI Management and its Automated Information Systems," was issued in October 1983, with two findings. Independent Quality Assurance (QA) reviews of the software for the Field Office Information Management System and for the Budget and Accounting System are needed; central coordination during system development to standardize data elements is necessary. The FBI is in agreement with the GAO findings.

The Technical Services Division (TSD) has incorporated these two automation projects into its QA schedule which includes all developmental automation projects in the TSD.

In September 1983, the TSD filled the Data Administrator position which provides for the central coordination of data standards.

Communications Equipment Overseas

Last year, the Committee staff visited your legal attache agent in Tokyo, Japan. Over there, it was discovered that your agent was using antiquated encrypting equipment--old tape machines--that are inefficient and that require the Embassy to maintain two separate communications systems, one electronic and computerized and the other to read and transmit encrypted tapes.

Do you have a plan to upgrade the communications equipment of your overseas agents?

The Legal Attache teletype equipment is scheduled to be replaced in FY 1986. The equipment must be replaced in each office. The replacement is contingent upon receipt of adequate numbers of nationally approved cryptographic devices scheduled for delivery in FY 1986. The required hardware will cost $487,500.

The replacement plan includes redundant hardware required to provide a high level of system availability and to minimize costs associated with dispatching a technician from Washington, D.C., to perform emergency repairs and routine maintenance.

Funding has been included in the FBI's budget for replacement of the Legal Attaches Secure Teletype System.

FBI Academy

The FBI academy offers a wide variety of training programs to select local law enforcement personnel at no cost. How are the trainees selected?

Spaces for local law enforcement personnel at the FBI Academy for specialized training are generally allocated through the 59 field offices. The field offices are held responsible for determining those departments and police officers with the greatest demonstrated need. Candidates are nominated for consideration by the head of the local law enforcement agency. There is a constant fluctuation of the number and kinds of schools offered.

Western Region Computer Support Center

In which city will you locate your Western Regional Computer Support Center?

Several sites are being considered for the Western Regional Computer Support Center. The FBI has presented its requirements to the General Services Administration for site acquisition.

DRUG ENFORCEMENT ADMINISTRATION

Foreign Cooperative Investigations

An increase of $2,775,000 is requested for Foreign Cooperative Investigations in FY 1985. Why are you requesting this increase when there is a proposed reduction of 11 positions?

In response to the first part of the question, it is important to clarify any doubts that may exist relative to these 11 positions. For FY 1984 the Congress approved an increase of 11 positions for Foreign Cooperative Investigations. However, since additional workyears were never approved for these 11 positions, no position allocations were ever made. In other words, there was no real increase in staffing in FY 1984 or decrease in FY 1985.

For synopsis purposes, a Special Enforcement Operations (SEO) is a concentrated enforcement initiative that provides for resource enhancement in a particular investigation or program. SEOs can be initiated by the Field Divisions or appropriate Headquarters drug sections. The additional resources will allow for ten additional foreign and five additional Caribbean SEOs, and the establishment of 23 Special Funding Intelligence Program (SFIPs). These SEOs will focus on heroin, cocaine and marijuana, and specifically on opium production capabilities in Southwest and Southeast Asia and Mexico. The SEOs will target clandestine opiate conversion laboratory operations and sophisticated trafficking organizations, which are flooding Western Europe and the U.S with high quality heroin. As to cocaine, the SEOs will target illicit cocaine conversion laboratories through the controlled sale of chemicals essential for cocaine production. Additionally, the SEOs will target organizations in Latin America that are trafficking in "sinsemilla" marijuana.

The Caribbean will be targeted specifically with intentions of identifying those trafficking groups who have centered in the Caribbean, which has been identified as a key area for drug transshipment, money laundering, and a safe haven for fugitives and which are clearly unchecked by local authorities because of the lack of manpower, funding, resources and equipment to effectively police their islands.

All intelligence and information gathered as a result of the SEOs will be shared with local police authorities in the Caribbean, thus permitting them to take law enforcement action within their own countries and territorial waters.

The SFIPs will focus on poppy production in Southwest and Southeast Asia and Mexico, on opium production and movement patterns, and on the growth, production and movement of cocaine and marijuana from Latin America.

Have source countries been participating with the DEA in regard to this activity?

Yes, DEA intelligence probes in Pakistan, Turkey and Mexico have pinpointed illicit opiate conversion laboratory locations, identified the owners/operators, and 17 laboratories were seized. The Government of Burma is seeking U.S. assistance in establishing an opium eradication program modeled after the program in Mexico. DEA is working closely with the Government of Thailand to control the illicit growth of opium in Thailand, and the traffic in opium and heroin from Burma to northwest Thailand. Mexico countinues to eradicate opium, and in 1983 nearly 5,000 acres were eradicated, which represents a 39 percent increase over 1982.

DEA's efforts to control the production of cocaine HCL in Colombia by limiting the traffickers availability of ethyl ether and other essential chemicals is now being accelerated. The success of this particular program has been outstanding with record seizures. Coca crop surveys were conducted in Colombia and Peru. Peru has already begun eradication based on these findings.

Do foreign governments pay their fair share of enforcement efforts?

Yes, although these governments may not set aside specific funding for special operations or intelligence programs relating to narcotic matters, most host countries are eager to assist DEA and allocate resources accordingly. These resources may range from manpower and technical equipment to marine or aviation equipment.

In what areas do you primarily focus your efforts?

The focus of DEA's efforts in the foreign cooperative area is varied. Primarily, DEA's mission is to reduce the foreign-origin drug supply destined for the U.S. illicit market. This is best accomplished through vigorous bilateral enforcement and intelligence operations, targeting major criminal orgainzations involved in the illicit cultivation, production and conversion of narcotics. Eradication, training, and crop substitution programs are equally as important to the DEA mission.

Drug Investigations

What percentage of drug investigations are initiated by the DEA? By the FBI? By other law enforcement agencies? By interdiction efforts?

DEA does not maintain a centralized information base which will provide this type of comparative data. However, based on figures provided by the FBI, there were 751 joint narcotics investigations with the FBI as of mid-March, and a total of 64 joint narcotic Title III intercepts.

Enforcement Priorities

What are the enforcement priorities within the domestic program activity?

DEA's FY 1984 Priority Objectives set forth the enforcement priorities for the domestic program. They were developed from the current Federal Strategy for Drug Abuse and Drug Trafficking Prevention, other White House policy documents, and the Attorney General's Policy and Program Guidance for 1985. Essentially, the agency's five FY 1984 Priority Objectives are as follows:

1. To bring all of the resources of the Federal Government to bear on our basic mission - the arrest, prosecution and immobilization of major drug trafficking organizations.

2. To enlist the active participation of State and local governments and law enforcement agencies in the national effort to stop illicit drug production and trafficking.

3. To reduce the supply of illicit drugs from source countries thereby reducing the availability of illicit drugs in the United States and abroad.

4. To develop new and refine current internal DEA systems, policies and mechanisms to maximize the use of resources and bring about long-term organizational and functional ability.

5. To participate actively and aggressively in the effort to mobilize public support and participation in the drug control effort both in the U.S. and abroad, and thereby reduce the demand for the supply of illicit drugs.

Under each of these objectives, the FY 1984 Priority Objectives and Operating plans call for specific action items which as implemented will help us to meet all of these objectives.

The FY 1984 Priority Objectives were markedly different from prior year objectives in that they, together with the action items and attendant operating plans, were of a more specific and task-oriented nature. The traditional national enforcement priorities, which ranked the drugs of abuse on a national level according to their social, health and economic consequences were discontinued in FY 1983. At that time, the FY 1983 objectives set localized drug priorities since the specific nature of the drug traffic differs from one locale to another. Under these objectives, and those of FY 1984, the assessments of local situations dictate the relative priorities of the individual field elements. The localized drug priorities are based upon 1) the risk potential to the individual user, 2) user prevalence and demography, 3) the socioeconomic impact of drug abuse and trafficking, and 4) the role of the particular area in national and international trafficking patterns.

Interdiction Efforts

Are interdiction efforts more successful when done in conjunction with other agencies? What are your most successful joint operations?

Each case and investigation has unique facets that must be constantly altered during the investigation to achieve the ultimate aim of not only seizing the narcotics but making a controlled delivery to the recipients of the narcotics. The degree of success is usually higher cases are those that are coordinated.

Resources Directed Toward Class Levels

What portions of DEA resources are directed toward Class I or II violators? Class III and IV? Are the level of resources committed to each of the classes proportionate to the number of arrests?

FY 1983 Resources Directed to Arrests

	Total	%	Class I & II	%	Class III & IV	%
Arrests	12,841	100	6,636	51.7	6,205	48.3
Investigative workhours*	2,751,412	100	1,957,406	71.1	493,579	17.9
PE/PI	$5,591,157	100	$3,747,076	66.9	$1,850,081	33.1

*About 11 percent of the investigative workhours were expended on cases pertaining to general files for which class levels are not assigned.

DEA monitors resources devoted to investigations according the Geographic Drug Enforcement Program (G-DEP) class of case, rather than the class of individual violators. These statistics, therefore, are presented by the G-DEP class of the case to which the resources were committed, or from which the arrests resulted.

These figures represent all DEA domestic activity, to include the State and Local Task Forces, which include a larger proportion of class III and IV cases than other DEA domestic activity.

Workhours include data for Special Agents, Diversion Investigators and Intelligence.

PE/PI includes Divisional totals only.

Drug Assets

Are the total amount of drug assets you show as seized solely a result of DEA efforts? How do you determine and verify results of DEA efforts when you work in concert with several other agencies?

The total amount shown on page 15 of the 1985 Congressional Budget represents all DEA and other agency cooperative seizures. All such asset seizures are reported to DEA. However, the various agency recordkeeping systems do not allow the tracking of cooperative seizures through the final disposition.

Training of Foreign Law Enforcement Officials

According to your justification, you provide training for foreign drug law enforcement officials.

What countries participated in FY 1983?

Algeria
Anguilla
Antigua
Argentina
Bahamas
Bahrain
Barbados
Belize
Bermuda
Bolivia
Brazil
British Virgin Islands
Cayman Islands
Chile
Colombia
Cook Islands
Costa Rica
Cyprus
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Federated States of Micronesia
Fiji
Finland
France
French Polynesia
Germany
Granada
Greece
India
Indonesia
Italy
Jamaica
Japan
Jordan
Kiribati
Kuwait
Lebanon
Libya
Macao
Malaysia
Maldive
Martinique
Mexico
Monaco
Monserrate
Nepal
Netherlands
Netherlands Antilles
New Caledonia
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Qatar
St. Kitts
St. Lucia
St. Martin
St. Vincent
Saudi Arabia
Singapore
Solomon Islands
South Africa
Sri Lanka
Sweden
Syria
Taiwan
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turks and Caicos Isl.
Vanuatu
Venezuela
Western Samoa
Yemen
Yugoslavia

How are the trainees chosen?

The trainees are chosen by the parent governments with input and approval of the appropriate United States missions.

Are all the costs reimbursed by the State Department?

Yes.

What account at State provides the reimbursements?

The Bureau of International Narcotics Matters, International Narcotic Control Funds.

Research Projects

Please provide a list of your research projects for FY 1985. How much to you expect to carry over from FY 1984 to FY 1985? How much did you carry over from FY 1983 to FY 1984?

DEA Research and Engineering Projects - 1985

Project Description	Cost
Technology Development Support--Quick reaction and ad hoc engineering support on specialized technical equipment	$250,000
Technical Support for Operations at EPIC--Development of text editing capability	150,000
Drug Abuse Prevalence--Follow-up studies and expansion of forensic laboratory data base	300,000
Office of Information Systems--Support office automation program for interfacing of computer and electronic mail service networks	200,000
SATCOM II--Specialized satellite communications system--Expansion of system for worldwide communications capability	300,000
TOTAL	1,200,000

There is no projected carry-over funding from FY 1984 to FY 1985 for the Research and Engineering activity.

There was $361,000 Research and Engineering activity funds carried over from FY 1983 to FY 1984.

Foreign Cooperative Investigations Program

Why are you reducing 11 positions from your Foreign Cooperative Investigations Program? Where will they come from?

In FY 1984 we requested and received an increase of 9 positions for this program. This increase augmented our planned overseas work force to a total of 283 positions (183 agents). In addition to the 9 positions, we will have an increase in workyears in both 1984 and 1985. Therefore, we are proposing to reallocate the additional 11 positions provided by Congress to higher priority requirements.

State and Local Training Program

In your State and local training program; what costs of the program are picked up by DEA? By the trainees? How are the trainees chosen?

All operational costs are picked up by DEA. These include salaries of the instructors, supplies and training aids, as well as research into the various subjects taught.

Travel and subsistence costs are paid by the trainees' State or local police departments.

The police departments nominate prospective candidates for the DEA program. The nominations are then screened by the DEA Special Agent in Charge in the jurisdictional area. The application is then sent to Glynco, Georgia for final screening and selection.

Intelligence Program

Where will the decreases come in your Intelligence Program?

DEA's reductions (29 positions and $1,551,000), which were proposed for this program are essentially offset by the approved increases (39 positions and $1,292,000) for additional narcotics-related and OCDE support. The net effect of these overall changes is to underscore DEA's longer-range commitment to those intelligence program operations which are of the highest priority to the President. Specifically, the position and funding offsets will serve to focus DEA's efforts on those strategic operations which hold the greatest promise for disrupting international drug trafficking. This shift in policy requires a more intense concentration of personnel and funding resources in support of the Intelligence community and OCDE programs. DEA will not experience any erosion of its base-level efforts in other components of its Intelligence program.

Asset Removal School

What type of training is received at an Asset Removal School?

Essentially the Asset Removal School consists of: accounting for investigators; banking systems; legal aspects of forfeiture; Title 31; and case studies.

FBI System Terminals

According to our justification, DEA's primary enforcement support systems, NADDIS, terminals were installed at FBI headquarters. Are any FBI system terminals installed at DEA headquarters?

No FBI system terminals are installed at DEA Headquarters.

Capitol Hill Task Force

What is the Capitol Hill Task Force? What is its jurisdiction and functions? Where is it located?

The Capitol Hill Task Force comprised only DEA agents, United States Capitol Police and D.C. Metropolitan Police Officers. It was an informal arrangement. It existed from July of 1982 through December of 1983, and was funded through the Washington Divisional Office.

Its jurisdiction was defined by the Controlled Substances Act, and its function was to investigate allegations of drug violations on Capitol Hill.

It was located at 2400 M Street, 5th floor, Washington, D.C.

JURIS

DEA is charged by the Department for centralized JURIS, litigation support and case management services. How often does DEA use these services?

During FY 1983, JURIS was used by DEA attorneys for approximately 155 hours. Since one hour on JURIS is equal to approximately seven to ten hours of library time, this tool is obviously very important and is becoming more important as its data base expands.

Domestic Law Enforcement Program

In describing goals and objectives of domestic law enforcement, DEA uses words such as "reasonably," "seriously," and "significant." Can DEA quantify those terms? If not, how does DEA measure the success of the domestic law enforcement program?

Any attempt to quantify such terms is extremely difficult, especially when taken out of context. Obviously, such modifying terms are intended to reflect a comparison with some existing or past situation. DEA measures the effectiveness of the Domestic Enforcement Program by using numerous quantitative indices and factors. For example, the following measures can be quantified and do provide an indication of the overall program effectivness.

1. The number of investigations initiated annually.
2. The number of Special Enforcement Operation initiated.
3. The percentage of investigative hours committed to Class I and II cases.
4. The percentage of total arrests resulting from Class I and II cases.
5. The total drug arrests for a given year.
6. The dollar value of drug related assets seized.
7. The number of clandestine laboratory seizures.
8. The number and percentage rate of convictions in both Federal and State courts.
9. Increases or decreases in drug deaths or injuries.

NOTE: The above statistical measures reflect the DEA impact on major drug trafficking organizations and furthermore, indicate the immobilization of drug trafficking networks, and the containment or reduction of the levels of drug availability.

Increased Federal Role Against Violent Crime

How does DEA propose to accomplish its major objective to "Increase the Federal Government's role against violent crime by supporting, within resource availability, local drug enforcement and intelligence operations wherein violent crimes surface as collateral violations to ongoing drug investigations." What type of support will DEA provide? What expertise does DEA have in the area of violent crime?

Research has consistently demonstrated a linkage between drug trafficking and many other kinds of crime including violent crime. While DEA does not focus specifically on violent crime, we believe that a correlation between drugs and violent crime does exist.

DEA addressess this connection on two levels, the Federal level and the State and local level. Studies in Detroit, Miami and elsewhere have shown that drug-related violent crime decreases during periods of vigorous enforcement action. Therefore, as the lead Federal agency for drug law enforcement we believe that our primary contribution is through the implementation of a clear, coherent and aggressive national enforcement policy characterized by an unequivocal commitment to reducing the supply of illegal drugs.

On a secondary, albeit no less important level, are our State and local cooperative programs. Drug-related violent crime most often falls within the State and local area of responsibility. DEA assists State and local law enforcement in meeting this responsiblity through our formal and informal task force operations, and our extensive training activities.

We presently have 22 DEA State and local task forces. In addition, we support within resource availability numerous other task forces throughout the country, and also provide assistance to individual State and local enforcement operations.

Any effective program to combat violent crime requires highly skilled and specially trained law enforcement personnel. In FY 1983, over 4,000 State and local officers received investigative, technical and managerial training from DEA. In addition to this formal training, State and local officers attend DEA in-house training on a space available basis.

Priority of Drugs of Abuse

Does DEA prioritize the major drugs of abuse? How does the emerging problem of domestically grown marijuana fit into DEA's priority system? How much effort goes into this program?

The traditional national enforcement priorities, which ranked the drugs of abuse on a national level according to their social, health and economic consequences, were discontinued in FY 1983. At that time, FY 1983 agency objectives set localized drug priorities since the specific nature of the durg traffic differs from one locale to another. As previously explained under the FY 1983 and FY 1984 DEA priority objectives, the assessment of local situations dictates the relative priorities of the individual field elements.

Accordingly, if a specific DEA field element identifies the emergence of a marijuana cultivation problem in that office's area of responsibility, then that office's manager will appropriately dedicate his resoures to combat the problem. Therefore, the DEA manpower dedicated to the program varies by field element. Nationwide, DEA had 61 employees dedicated to the program during FY 1983. At headquarters three staff coordinators are dedicated full-time to the program. Conversely, field offices have personnel dedicated to the program both full-time and part-time, again depending upon the severity of the problem in that area.

For FY 1984, DEA established a full-time training position in Glynco to coordinate the 20 State and local detection and eradication schools' scheduled. Additionally, DEA pilots are scheduled to support each of the schools with their aircraft.

DEA Cooperation

In reference to cooperation between DEA, U.S. Customs Service, INS, and the Coast Guard, what does it mean when you say "coordination of defendant debriefing techniques in cases not acceptable for Federal prosecution"? Is this a DEA-wide practice or only in certain specific locations?

DEA cooperates with all interdiction services. We have developed programs at not only our headquarters but field level as well to specifically coordinate the flow of intelligence from DEA to these agencies. The Customs Information Program at our headquarters has a Customs intelligence analyst permanently assigned, and this individual reviews all of our teletypes and is given those concerning interdiction. He also reviews our DEA-6 investigative reports on debriefings of defendants who have cooperated with us. The National Narcotics Boarder Interdiction System (NNBIS) receives cable traffic originated by our offices and transmitted by EPIC. In addition, we have assigned an agent and intelligence analyst to each NNBIS center.

DEA has always maintained close liaison with INS and we are continuing to do so throughout our divisions.

Regional Information Sharing Systems

Congress, through the Justice Department, has been funding a network of regional information sharing systems to support State and local intelligence sharing and investigative efforts. Most of these efforts deal with drug and/or violent crime. Does DEA's State and Local Task Force program work with the support these RISS programs?

The Western States Information Network (WSIN) is the only one of the regional information sharing systems that DEA's State and Local Task Forces participate in to any significant extent.

Does DEA's EPIC system exchange intelligence information with State and local police agencies through the RISS programs?

The El Paso Intelligence Center (EPIC) has agreements for the direct exchange of information with the principal State law enforcement agency in each of 48 States. EPIC member agencies act as the central point for information exchange between other law enforcement agencies located within each State and EPIC.

EPIC has an agreement with only one RISS project, WSIN. Because EPIC also has agreements with WSIN member states (California, Oregon, Washington, Alaska and Hawaii), EPIC exchanges information either directly with these States or through WSIN, depending upon which route was used to make the inquiry.

OCDE Intelligence Specialists

How will the work of the 13 intelligence specialists assigned to the OCDE task force program differ from specialists already working at DEA. What will be unique about the data base referred to on page 45, which differs from the intelligence data base which DEA already accumulates on level I and II violators?

Those analysts assigned to the Task Forces are dedicated full-time to those investigations conducted by the Task Forces. Those analysts working only within the DEA structure support DEA investigations, which are not part of the Task Force. The analytical work is basically the same. Whereas the Task Force analysts work with multi-agency sourced investigative and intelligence reporting, the analysts assigned to DEA investigations work primarily with DEA sourced material.

The data base referred to in the 1985 Authorization and Budget Request will consist of investigative and intelligence data reported by all of the participating OCDE agencies. The information derived from DEA reporting will only be a part of that data base. All reporting will be examined to determine what impact the data could have on the investigation; it is systematically filed for future research.

Marijuana Detection

Is DEA, as part of its research programs, funding any projects for the detection of marijuana growing in the United States? Who is paying for the U2 flights/satellite pictures reported in the press?

The DEA Research Program is not currently funding any projects for the detection of marijuana growing in the United States.

Seized Assets/Forfeiture Proceedings

For each of the fiscal years 1982 and 1983:

--What was the total value of assets seized?

Seizures

	DEA Seizures	Other Agency Cooperative	Total
FY 1982	$106,656,948	$84,082,968	$190,739,916
FY 1983*	71,556,529	133,356,193	208,912,722

*Data incomplete; reflects approximately 10 months of FY 1983.

--How much was brought in due to forfeiture proceedings?

Forfeitures** (DEA only)

FY 1982	$39,588,431
FY 1983*	28,574,436

*Data incomplete; reflects approximately 10 months of FY 1983.

**The various agency recordkeeping systems do not allow the tracking of cooperative seizures through to final disposition.

--Where do forfeiture proceeds go?

After application to DEA's appropriation for expenses incurred, they are returned to miscellaneous receipts (general fund) of the U.S. Treasury.

--What is the current value of the inventory of seized assets?

Data are currently decentralized. Based on a sampling, the estimated value is $210 million.

--What is needed to help your forfeiture efforts?

Passage of pending legislation dealing with forfeiture matters including: raising the current jurisdictional line between judicial and administrative forfeitures from $10,000 to unlimited for conveyances and $100,000 for other assets; forfeiture of lands; central forfeiture funds provisions; transfers of property to State and local law enforcement agencies; and rewards for informants.

Domestic Financial Investigative Training School

What is taught at the Financial Investigative Training School?

The Domestic Financial Investigative Training School is the same as the Asset Removal School. Essentially, training consists of: accounting for investigators; banking systems; legal aspects of forfeitures; Title 31 cases; and case studies.

We do provide a 5-day training program for foreign officials. This program consists of accounting for investigators, international banking systems, negotiable instruments, tracking of assets and case studies. In addition, a local official from the host country gives a lecture on the local laws of the host country.

13th OCDE Task Force

We notice that next year you are establishing a 13th OCDE task force, which will cover Florida, Puerto Rico and the Virgin Islands.

--How extensive is the problem currently in Puerto Rico?
--In the U.S. Virgin Islands?
--How extensive are current efforts in Puerto Rico?
--In the U.S. Virgin Islands?

The drug trafficking and abuse problem in Puerto Rico and the U.S. Virgin Islands involves primarily cocaine and marijuana. Puerto Rico is a transit point for cocaine smuggled from South America. Marijuana enters the Puerto Rican market directly from Colombia, usually by private aircraft landing on clandestine airstrips. Vessels used in marijuana smuggling usually enter Puerto Rico under cover of darkness along the south coast where there is an abundance of cays and inlets. "Mother ships" laden with multi-tons of marijuana and destined for the continental United States frequently use the nearby Caribbean. It has been established that the funds of drug underwriters are being transferred from Miami to San Juan, since the banks in Puerto Rico have shown multi-billion dollars in surplus cash exclusive of routine transactions.

The following investigations illustrate the kind of trafficking activity in this region. On October 24, 1983, DEA agents from the San Juan District Office traveled to Scrub Island, Anguilla, arrested four defendants and seized 601 pounds of cocaine. This was the largest cocaine seizure ever made in the San Juan office's area of responsibility.

On November 9, 1983, the U.S. Coast Guard seized the M/V "Black Hawk" and its 29,000 pounds of marijuana, approximately 200 nautical miles north of Puerto Rico. Six defendants were arrested.

On December 25, 1983, one defendant was arrested and 4 1/2 pounds of cocaine were seized on St. Thomas by DEA, the U.S. Virgin Islands Narcotics Strike Force and U.S. Customs. The investigation, which led to this arrest and seizure, involved the smuggling of multi-kilogram quantities of cocaine via cruise ships from source countries.

In the fall of 1983, agents from the Puerto Rico office provided considerable support to the Santo Domingo office investigation, which resulted in the seizure of 21,000 pounds of marijuana from the vessel El Daria off the northern coast of the Dominican Republic. Many established violators who traffic multi-kilogram quantities of cocaine in and out of Santo Domingo are based on Puerto Rico.

The San Juan International Airport also presents a serious drug trafficking problem for Puerto Rico. Couriers smuggling cocaine and other drugs in false bottom suitcases and other devices are not uncommon. Last December, a Lebanese courier was arrested in possession of 3,287 grams of white heroin contained in false sided suitcases.

To deal with the serious and fluid drug trafficking situation in Puerto Rico and the Virgin Islands, DEA has assigned 16 special agents, two intelligence analysts and five diversion investigators to its Puerto Rico office. In addition to standard enforcement activities, DEA personnel in Puerto Rico devote considerable effort to Operation Greenback and its subsidiary operations such as Operation Tracer. This operation is a continuing DEA/IRS/USCS/FBI/U.S. Attorney and Puerto Rican Department of Treasury effort directed toward the immobilization of major narcotics organizations and seizure of their assets. A full-time prosecutor has been appointed and a Grand Jury has been empaneled. The Operation Greenback-Puerto Rico team monitors, targets, investigates and ultimately prosecutes major drug traffickers by scanning the assets of the bank accounts in Puerto Rico, and violations of the Currency Transaction Report (CTR) and Currenty Monetary Instrument Reports (CMIRs) requirements.

On the licit side, DEA's San Juan office continues to pursue major investigations of registrant divertors with the Drug and Narcotics Control Division of Puerto Rico, and to provide the Division with Automated Reports and Consolidated Order System information to enhance their intelligence data base and target significant divertors.

In addition to these kinds of efforts, the San Juan State and Local Task Force approved this fiscal year is now investigating cases at the Class I and II levels for prosecution in Federal Court, assisting local agencies in the development of cases for State prosecution, and training local counterparts in complex investigative techniques. The State and local task force, together with the San Juan office also play an active role in the U.S. Virgin Islands Narcotics Strike Force, and the Law Enforcement Coordinating Committee for Puerto Rico.

Domestic Marijuana Eradication

You are requesting a program base level of $2.5 million for domestic marijuana eradication efforts. This money will be used to help State and local law enforcement agencies engaged in marijuana suppression. Surely this level of funding is a drop in the bucket compared to what local agencies are spending on this effort. Is there a unique Federal contribution? What is the purpose of this program?

The DEA Domestic Marijuana Eradication/Suppression Program was established to ensure a coordinated effort between Federal, State and local agencies involving the eradication of domestically cultivated cannabis in the United States. DEA's role in this cooperative venture is to encourage State and local eradication efforts, and to contribute, within limitations, funding, training, equipment, investigative and aircraft resources to support such efforts.

While $2.5 million in no way equals the amount of money spent by local agencies, it is not the intent of this program to totally defray their expenses. In recent years, we have come to recognize that domestic cultivation has become a problem which must be addressed. State and local enforcement agencies perform the bulk of this nation's drug enforcement effort and we recognize that dealing with the domestic cultivation problems, unique situations not normally encountered in "routine" enforcement efforts present themselves.

Examples of these problems are:

- Specialized legal training
- Aerial observation
- Physical removal and destruction of cannabis

These problems require additional training, availability of aircraft and specialized equipment. It is therefore the intention that this program supplement, not substitute, normal State and local enforcement funding to offset these extraordinary expenses.

OCDE Program

Do you believe the OCDE or your domestic enforcement program is more effective? Why? How do the two types of cases differ?

The President's OCDE Task Force program provided a long overdue major increase in personnel and financial resources for the Drug Enforcement Administration. Unlike other standard increases in the agency budget, we have made a conscious effort to allocate OCDETF funds directly to investigative areas and investigative support such as the purchase of evidence and information, field operating expenditures, the purchase of airplanes, radios and investigative equipment and the salaries of the 274 Special Agents and 63 support personnel. In essence, this infusion of OCDETF funds represents a substantially large immediate and direct benefit to the DEA special agents in the field.

This infusion of resources to the field enabled us to devote more resources to Class I and II investigations, many of which have become and may become OCDE investigations. The OCDE cases usually involve the highest levels of the traffic and compare with DEA Class I investigations. They differ in part from many of our Class I investigations by virtue of the significant dedication of multi-agency resources to the cases, and the high priority given to the OCDETF program by the U.S. Attorneys and the Assistant U.S. Attorneys.

With regard to effectiveness it is not a question of whether the OCDE program or our regular enforcement program is more effective than the other since they complement one another. The two programs are today intrinsically related so that building on one, DEA's regular domestic enforcement program, allows us to reach the highest levels of the traffic and bring to bear resources of the Federal, State and local governments to disrupt, immobilize and prosecute those ultimately responsible for the drug traffic in this country.

PE/PI

Last year, Congress added bill language requiring you to allocate at least $10,000 for the purchase of evidence and information to the land border States of New Hampshire, Vermont, Michigan, Minnesota, North Dakota, Montana, Idaho, Arizona, and New Mexico. This year, you are asking us to drop that requirement because, according to your justification, "DEA has in place certain funding allocation mechanisms to assure prompt and effective availability" of evidence and information purchase funds.

--Please describe those mechanisms.
--You request appropriations language to make funds for purchase of evidence and payments for information available for a two-year period. Why?

Each domestic field division receives an annual allowance of funds for the purchase of evidence and payment for information (PE/PI), which is apportioned on a quarterly basis. Should enforcement efforts dictate the need for additional funds, the SAC can request that his quarterly allowance be increased accordingly. Each field division apportions its PE/PI allowance among its field offices and delegates appropriate authority to approve PE/PI expenditures among its field managers. We have found this system to be most cost effective and efficient since it affords us the flexibility to shift funds within and between field divisions and thus rapidly respond to immediate needs for PE/PI funds anywhere in the United States.

The essential unpredictability of these expenditures, where coupled with a fixed appropriation over a fixed period of time, inevitably results in compromised decisionmaking. Ideally, management decisions on PE/PI expenditures should be based strictly on operational factors. Actually, these decisions are further influenced by factors such as the time of year, earlier decisions made on other opportunities, and future decisions that might have to be made on opportunities which have not yet presented themselves.

No-year funding has traditionally been apropriated for certain grant and contract programs in which a given "expenditure" occurs piecemeal over a period exceeding a single fiscal year. Although such programs conceivably could be modified to conform to the customary funding cycle, they function more efficiently by being divorced from it. We believe the same rationale applies to PE/PI on a two-year basis.

Our current system of managing PE/PI is designed to support our operations in as efficient a manner as possible. We believe that, if PE/PI continues to be appropriated on a two-year basis, efficiency will be improved to the point where the operations will be enhanced. This enhancement will manifest itself in the following ways:

1. Medium and long-range operations can be continued without termination or interruption due to fiscal year end.

2. Special programs to meet fast-emerging, unforeseen problems can be funded without having to pull funds from planned operations.

3. In a common situation, an agent draws funds to make a fourth quarter purchase. If the purchase cannot be made by the end of the fiscal year we will have to return the unspent funds, perhaps have to stall the purchase (with the consequent risk of not completing it), and then have to obligate funds from the following year's appropriation. The lack of a two-year appropriation results in:

   - loss of the unexpended funds
   - interrupted operations
   - decrease in funds available for the following year's operations

4. Tacit pressure to "spend or lose" would no longer exist. To avoid the loss of PE/PI, management may elect to execute a planned purchase at a point where, if given more time, additional or higher level violators could be implicated.

In sum, PE/PI is a unique budget category in that expenditures are not controllable in the customary sense. The decision as to whether or not to make a specific expenditure is controllable, however, whether or not the opportunity presents itself, when and where the opportunity may arise, and even the amount of expenditure to be made, are not controllable.

Stronger Foreign Drug Laws

Has the DEA been effective in encouraging countries to adopt stronger drug laws?

Yes! Recently, DEA has been assisting many host countries in the implementation of existing laws, and the development of legislation in countries without statutes with regard to the seizure and forfeiture of drug assets. So far, Italy, Austria and the Netherlands have enacted drug laws where none perviously existed.

Federal/State and Local Task Force Program

In your Federal/State and local task forces program:

--How did you choose the 22 geographic areas where you have fully operational task forces?

--Do you plan to establish other task forces in other areas of the country?

Many of the current Federal/State and local task forces have been operational for several years. However, the criteria for establishing State/Local task forces has remained relatively unchanged and is as follows:

1. That the geographical area proposed has a significant drug trafficking problem confirmed by intelligence.

2. The State and local police authorities are willing to participate fully in the program with both resources and manpower.

3. That the Federal Drug Enforcement program would derive significant intelligence and some major drug cases from the task force program.

4. That the combined task force would significantly affect the area's drug trafficking problem, and also aid in reducing associated violent crime.

5. That State and local police officers would receive drug investigative training and experience contributing to an increase in the overall effectiveness of drug enforcement in that area.

DEA currently operates a number of additional task forces on a limited scale. Their effectiveness is periodically reviewed in an effort to identify certain such operations suitable for formal establishment.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

FEDERAL BUREAU OF INVESTIGATION

Tenure of Director

Judge Webster, there is a highly complimentary article about you in the new issue of Washingtonian. You know of my own personal high regard for you. We would have had a new Attorney General by unanimous vote if you would have been nominated.

The article mentions that you may be leaving the FBI this summer. Perhaps this is something you don't want to talk about at this point, but this makes me wonder about the validity of the 10-year term for the Director.

After 6 years in the job, what do you think of a 10-year term?

A response to this question will be transmitted at a later date.

White Collar Crime

Why is the white-collar crime area referred to as "one of the FBI's top priority investigative activities" and then suffers a reduction of 191 positions?

White-collar crime is one of the FBI's top priority investigative activities and as such is one of the three largest field investigative programs. By virtue of its size and complement of experienced investigators, it was necessary to divert experienced personnel from the program to the newly assigned responsibilities in narcotics investigations. While many of the white-collar crime investigations are lengthy and complex, they are often not life-threatening situations and may be unaddressed for a longer period of time than other investigations such as narcotics matters. The decision to divert white-collar crime agents to address unforeseen jurisdiction in the narcotics area was a responsible decision to bring to bear the investigative expertise of those agents having not only the experience but the academic skills in accounting and computer science necessary to address investigations focusing on the illegal laundering of large sums of monies derived from narcotics and the complex organizational stucture of many narcotics enterprises. During FY 1983, approximately 783 agent workyears were used in the investigation of narcotics matters. This was accomplished despite the fact that only 334 positions had been allocated to the FBI from the OCDE monies for narcotics investigations. Agents were, therefore, drawn not only from the white-collar crime program, but from other investigative programs as well to address the immediacy of the narcotics problem.

Please supply a list of the Federal employees included in the 1,008 persons convicted, due to Governmental Fraud and Bribery investigations in FY 1983, including the charges, date of conviction and sentence.

The FBI does not maintain its statistical data in a manner which enables it to respond to this question. I can advise you that in all white-collar crime investigations, including Governmental Fraud and Bribery, a total of 111 Federal employees were convicted of various crimes.

FBI and DEA Agents

Please bring the Committee up to date on the characteristics of the agents of the FBI and DEA.

FBI agents formerly were lawyers or accountants. Is that still the case?

Individuals with law or accounting backgrounds are still among those most actively sought to fill the FBI special agent vacancies. Due to the varied nature of the FBI's responsibilities, however, the FBI also seeks to hire persons with other specialized skills, such as linguists, engineers, chemists, explosives examiners, fingerprint examiners, etc. Adding such personnel to the staff of special agents assists the FBI in being able to successfully address the many types of cases it is mandated to investigate.

Please detail the background of the FBI and DEA agents appointed over the last year, i.e., lawyers, accountants, etc.

Set forth below are figures showing the number of FBI agents hired during FY 1983 in each of the qualification categories. By way of explanation, individuals qualifying under the Modified Program must possess a bachelor's degree and three years of full-time employment experience or a master's degree with two years of such experience. Persons hired from this program provide the FBI with much valuable experience because of their varied backgrounds. They include, among others, individuals who previously served as military officers, law enforcement officers, investigators, persons with executive or administrative experience in private industry, etc.

Attorneys	Accountants	Scientists	Linguists	Modified
151	113	29	18	355

The background characteristics of a DEA special agent hire for FY 1983:

100% have bachelors degrees
60% have previous law enforcement experience
41% have some second language proficiency
25% have post graduate degrees
25% have previous military experience

Is there any difference in the basic qualifications for appointment as an FBI vs a DEA agent?

The attached chart sets forth the basic qualifications needed for appointment to the special agent position within the FBI and DEA.

How do the qualifications of a DEA agent compare to the qualifications for appointment to the Metropolitan Washington Police Department?

See the attached chart.

What is the starting grade and salary of an agent in both organizations?

FBI special agents enter on duty as a GS-10 with a salary of $23,199 per annum plus AUO. The entry level for DEA agents is GS-7, which has a yearly starting salary of $17,138 plus 25% AUO ($4,284) or $21,422.

If one kind of agent starts at a higher grade than the other, does that not imply a higher level of basic qualifications for appointment?

DEA's entry standards for a GS-7 special agent conform to OPM criteria. Additionally, 100 percent of all special agent hires over the last five years have had bachelors degrees. DEA has for some time actively recruited accountants, lawyers, linguists and pilots.

One of the minimum entrance requirements for the FBI special agent position is a college degree. Persons attempting to become FBI agents must also have either full-time work experience amounting to three years with a baccalaureate degree and two years with a master's or have a specialized background or skill such as a language ability, an accounting or engineering background, a law degree, etc.

Do the appointments over the last year justify paying a higher starting salary to FBI agents?

To enable the FBI to remain competitive and to be able to continue to appoint individuals with the specialized skills needed to handle its varied responsibilities, the GS-10 entrance level is necessary.

What is the length of basic training given to the agents after appointment and before their first assignment?

FBI and DEA agents undergo a training program which is 12-15 weeks in duration.

Where is the basic training given?

FBI special agents are trained at the FBI academy on the grounds of the U.S. Marine Corps base in Quantico, Virginia. DEA agents are trained at Glynco, Georgia.

What is the backlog of applicants for appointment to be agents?

Although the FBI presently has the names of approximately 15,000 applicants in its Special Agent Selection System, there is no backlog for appointment. The FBI anticipates hiring approximately 660 new special agents during the current fiscal year, and individuals to fill training classes are selected from the system as needed. The specialized investigative needs at any given time dictate the backgrounds of those chosen. For example, one class may contain a large number of attorneys; another may have more accountants, etc. Selections are based on the results of written tests, a formal interview, and a background investigation, with the top ranked individuals in each of the system's selection categories being those who are afforded consideration for the available openings.

DEA has processed almost 14,000 special agent applications in the last two years. For FY 1984, we expect to hire approximately 300 new special agents. DEA currently has a pool of cleared applicants from which applicants are selected to attend Basic Agent Training.

I asked the preceeding questions as background to a concern about the merger of the FBI and DEA agents. We keep hearing that a merger is in the mill, but with the differences in their qualifications and the fact that the FBI is Excepted Service, while the DEA is Civil Service, I do not see how that can happen. Do you forsee a merger of the agents and under what conditions?

At present there are no plans to merge the FBI and the DEA. We have, as you know, studied the situation extensively, and we are joining in projects designed to create efficiency of operation and cost savings. As you point out, one of the primary difficulties in any proposed merger is the Excepted Service versus Civil Service status of the personnel.

Organized Crime Drug Enforcement

In the 1984 budget it was anticipated that $13,656,000 of the 1983 appropriation for Organized Crime Drug Enforcement would be carried forward to fiscal 1984. The 1985 budget shows that the unobligated balance at the end of FY 1983 was actually $18,143,000.

The original 1983 appropriation only permitted $18,000,000 to remain available beyond the end of FY 1983. How is it that an additional $143,000 was carried forward?

What accounts for the difference between the $13,656,000 unobligated balance originally projected and the $18,143,000 actually unobligated at the end of FY 1983?

What is that difference being applied to in FY 1984?

Public Law 97-377, Continuing Appropriations for 1983, made available until expended $18,000,000 for the construction of new facilities and for constructing, remodeling and equipping buildings and facilities at existing detention and correctional institutions. In the 1984 budget it was anticipated that $13,656,000 of this amount would be deferred for several expansion projects which could not be completed in FY 1983 due to the time required for planning, design efforts and selection of contractors. In actuality, however, $14,743,000 was carried forward into 1984 for this purpose.

In addition to this carry-over authority, P.L. 98-63, 1983 Supplemental Appropriations Act, granted further carry-over authority of $9,619,000 for under-cover operations and $14,000,000 for purchase of automated data processing and telecommunications equipment. For these reasons the actual amount carried forward into FY 1984 is greater than the amount specified in the original 1983 appropriation.

Payments to Informants

On page 20 of the justifications, it is stated that the "FBI impact on organized crime and narcotics investigations depends substantially on the use of highly effective informants and the ability to pay them substantial sums for services and expenses."

What procedures are used to monitor these payments to insure that they are cost effective?

Currently, the Special Agent in Charge (SAC) of each field office is responsible for any payment to an informant for services rendered or expenses incurred in furtherance of FBI investigative interest. Each payment must be requested by a memorandum to the SAC justifying the requested payment, and the SAC or, in the SAC's absence, the Assistant Special Agent in Charge is to insure that the payment to the informant is commensurate with the value of information or services received.

In general, SACs may approve payments to individual informants for services rendered or expenses incurred in furtherance of FBI investigative interest up to $1,500. If additional payment authority is needed to operate a particular informant, the field office must make a request to FBI Headquarters (FBIHQ) for a renewal of SAC payment authority in the amount of $1,500. In each request for an additional $1,500 SAC payment authority, the field office must set forth a summary of the information provided by the informant for which he/she was paid and additional pertinent information, including the value of the information to the investigation. Based upon the justification, FBIHQ grants authority for an additional $1,500 for use in the operation of the informant.

If a field office desires to pay an informant a lump-sum payment in excess of $1,500 for outstanding services in furtherance of an FBI investigative matter, the SAC must request FBIHQ to approve the payment for the informant based on accomplishments claimed. Justification should include items such as the significance of the case, arrests, recoveries, indictments, convictions, hardship overcome, or other accomplishments which would not have been possible without the extraordinary efforts of the informant.

Reduction in Fingerprint Identification Personnel

The deferral message transmitted by President Reagan on March 27 included $34,000,000 of the funds provided in FY 1984 for the automation of fingerprint identification. The budget includes a reduction of 102 positions in the Fingerprint Division as a direct benefit of automation projects planned in the Fingerprint Division.

How does the pushing back of your automation efforts to FY 1985 impact on the position reduction proposed for the Identification Division?

The deferral of $34 million of two-year funds appropriated in FY 1984 to FY 1985 will have no impact on the proposed position reduction. The deferred funds, combined with the proposed restoration of

$5,381,000 cut from the FY 1984 request, will make it possible for the FBI to contract for a system in early FY 1985. However, the benefits of the new system will not be realized until FY 1988. Therefore, the postponement of the automation effort until FY 1985 will have no effect on the proposed position reduction.

Was this reduction of 102 positions part of the Department's request to OMB for FY 1985?

The reduction of 102 positions was not part of the Department's FY 1985 request to OMB.

Wanted Notices

Is these any particular reason why the number of fugitives identified through posters of wanted notices decreased from 17,283 to 13,735 between fiscal years 1982 and 1983?

Yes, the decline in fugitives identified through the posting of wanted notices between FY 1982 and 1983 resulted from a change in the policy of recording this statistic. Prior to FY 1983, an identification and subsequent cancellation of a wanted notice by any means were included in the count. In FY 1983 it was decided that, in order to better reflect the results of work performed by the Fingerprint Identification program, only those fugitive identifications directly resulting from that program would be included. Therefore, the FY 1983 statistic represents the number of fugitive identifications resulting solely from the Fingerprint Identification program.

Legal Attaches

Are the support personnel to the Special Agents overseas secretaries or just what are their duties?

There are 26 support personnel in the Legal Attache offices. In addition to secretarial functions, support personnel in Legal Attache offices are responsible for office service management, including encrypting and decrypting cables, certain liaison activities within the U.S. Embassy, and handling all office functions such as responding to official requests when Legal Attache and their assistants are in travel status.

The total complement of agents is 28 and the total complement of support personnel is 26 in Legal Attache offices. The ratio in Legal Attache offices is .9 percent support personnel per agent. The ratio in field offices is approximately .6 support personnel per agent.

Support personnel in Legal Attache offices perform all traditional required support activities in addition to support activities unique to our foreign offices resulting in a higher support personnel to agent ratio in Legal Attache offices.

Program Direction

Was the FBI over staffed in Executive Direction and Administrative Services, or how is it that 538 new positions can be added in 1985 with no increase in these areas?

The Executive Direction and Control and Administrative Services programs have not been overstaffed in the past and are not currently. In fact, these programs were required to use 19,448 hours of support overtime in FY 1983.

The FBI has attempted to maintain the current personnel staffing level at FBI Headquarters. This will be addressed n the future; however, in FY 1985 the emphasis is on investigative and investigative support personnel increases.

Representation Funds

It is our understanding that the FBI is allocated $17,000 of the $50,000 currently available to the Department for representation. Furthermore, it appears that FBI personnel are spending about $30,000 more per year for official representation that is not reimbursed due to the overall limit.

Did the FBI request an increase in representation for FY 1985 and in what amount?

Yes. The FBI requested an increase of $30,000 for representation funds for FY 1985.

Is $30,000 still a valid estimate of the additional allowance required for representation?

Yes. The $30,000 will provide an adequate allowance for representation expenses in 1985.

Are we assured that representation expenditures are strictly controlled and used only for official functions of high importance to FBI activities?

Yes. Reimbursement from the Representation Fund; is authorized for expenditures by FBI employees whose official positions entail responsibilities for establishing and maintaining relationships of value to the FBI. In particular, representation expenditures are authorized to:

(1) Extend courtesies to representatives of foreign countries, and

(2) Fund official activities that further the interests of the FBI.

In the field, reimbursement from representation funds is authorized only for functions and/or courtesies having the attendance or involvement of the Special Agent in Charge or the Assistant Special Agent in Charge.

At FBI Headquarters, reimbursement is authorized only for those functions and/or courtesies having the attendance or involvement of a Section Chief or executive of higher rank.

The Legal Attaches are limited to one social event annually.

The FBI exerts strict accounting controls over the expenditures of representation funds. Expenditures exceeding $100 require the approval of the Director or an Executive Assistant Director; expenditures of a lesser amount must be approved by the Assistant Director of the Administrative Services Division or his deputy in charge of the Financial Management Branch. All anticipated uses of representations funds must be justified and approved prior to expenditure.

Expansion in the international character of FBI responsibilities in recent years has subtantially increased the need for representation funding.

1. International Criminal Police Organization (INTERPOL). INTERPOL is an association of 135 member countries whose purpose is to assist its members in criminal law enforcement matters on an international level. In July 1983, the FBI began full participation in INTERPOL.

   The FBI's participation in this international law enforcement organization requires attendance at the annual INTERPOL General Assembly, as well as other meetings and seminars. Experience has shown that other INTERPOL members, including the less affluent countries, frequently host U.S., and particularly FBI, delegates to dinners and other social events, many of which are lavishly catered. They are likewise prolific in exchanging mementos such as plaques, cuff links, and the like. To avoid embarrassment to the United States and the FBI, the FBI must reciprocate these courtesies.

   Conferences scheduled for calendar year 1984, to which FBI participation is considered advantageous, are:

   Third International Symposium on Violent Crime Committed by Organized Groups
   St. Cloud, France

   53rd General Assembly
   Luxemborg

   5th INTERPOL Caribbean and Central American Conference
   Caribbean (Specific location to be announced)

   Standing Working Party on Disaster Victim Identification
   St. Cloud, France

   Committee to Study Application of Electronic Data Processing to Stolen Cultural Property
   St. Cloud, France

   These specific events create occasions when the use of representation funding is almost obligatory. In addition, the liaison relationships established at these conferences are frequently strengthened through visits to the FBI in the United States, creating additional occasions when representation-type expenditures become necessary.

2. Organized Crime/Narcotics and Terrorism. In recent years, the investigation of organized crime, narcotics and terrorist activities has taken on an international character far surpassing investigations in the past.

Investigative thrusts at organized crime involvement in narcotics importation translate into investigations of international drug trafficking cartels which have a major impact on both cocaine and heroin trade in the United States. These groups include heroin traffickers from Southeast Asia, Mexico and Western Europe (in particular, Sicily), and major cocaine groups from South and Central America. In addition, the islands of the Caribbean are financial havens for drug money, as well as points of storage for further exportation to the United States. Narcotic enforcement, being an international problem, requires frequent discussion with law enforcement officials and diplomatic officials throughout the world. The FBI and the Drug Enforcement Administration (DEA) have substantially increased coordination with Italian and Canadian authorities regarding strategies to deal with the common problem of heroin trafficking. The FBI and DEA hosted a conference at Quantico, Virginia, in October 1982, attended by law enforcement officials from the Royal Canadian Mounted Police, Italian National Police and a national law conference was held in Ottawa, Canada, January 9-11, 1984.

The FBI has also participated in two international organized crime/narcotics conferences, one in Tokyo, Japan, in November 1981, and another in Honolulu, Hawaii, in December 1983. At these conferences, Japanese officials and national law enforcement authorities discussed Asian organized crime groups, and narcotics trafficking by these groups.

The FBI participates in a number of executive branch narcotics coordinating committees, as well as the following international groups:

International Narcotics Enforcement Officers Association

International Association of Chiefs of Police

Italian, Canadian, and American Conference

Japanese-American Organized Crime Conference

Similar to Organized Crime/Narcotics, international cooperation and coordination are essential in the investigation of terrorist groups.

The FBI has participated in a number of international conferences relating to Armenian and Croatian terrorism. These conferences have enabled FBI personnel to establish a closer relationship with foreign security services which, historically, have not been known to readily exchange operational intelligence information. Visits to FBI Headquarters by high-level officials of foreign police and security agencies have resulted from these conferences.

Whether it be in connection with Organized Crime/Narcotics, Terrorism, or other investigative programs of international import, conferences hosted by foreign services have included working luncheons, dinners, and receptions as common practice among a majority of foreign services. Frequently, during non-working hours, these foreign services have exposed the FBI representatives to cultural activities to foster a better understanding of the host country and its citizens. These exchanges have significantly enabled FBI personnel to better understand the working environment and the problems their international colleagues face in "getting the job done." In view of the high esteem in which the U.S. Government and the FBI are held throughout most of the world, it is expected that the FBI reciprocate in some manner while attending official conferences on foreign soil, as well as hosting conferences in the United States.

The available funds for defraying representational expenditures of the FBI are currently inadequate to the need as set out in this position paper.

Restoration of 1984 Reduction

How did the FBI absorb the 1 percent reduction imposed by the Committee last year?

On what basis is restoration of the 1 percent congressional reduction requested as a base adjustment?

It was a program reduction in 1984 and why is it not budgeted as a program increase in 1985?

What will restoring the $5,381,000 be used for, as no workyears appeared to be included?

The FBI's original request to the Congress for FY 1984 was in the amount of $1,055,690,000 and included a request for $40 million for two years to procure the Automated Identification Division System - Phase III (AIDS-III). AIDS-III is the culmination of the FBI's project to automate the Identification Division's work functions which began 16 years ago.

An amendment to the FBI's appropriation, in the amount of $2 million, was requested to provide for the relocation of the FBI's Engineering Section. The FBI's total request to the Congress was, therefore, $1,057,690,000.

The following tabulations set forth the amounts allowed by the House and the Senate and the amount appropriated for FY 1984.

(In thousands of dollars)

	House Allowance	Senate Allowance	Appropriation
Initial Request........	$1,055,690	$1,055,690	$1,055,690
Amendment..............	...	2,000	2,000
Reduction for SLUC.....	-5,309	-5,309	-5,309
1% Reduction (Ident. Division Automation).	...	-10,524	...
Senate/House Conference Reduction (1%).......	...	...	-5,381
TOTAL..................	1,050,381	1,041,857	1,047,000

In order for the FBI's base for 1985 to agree with the base allowed by the Office of Management and Budget (OMB), it is necessary to include the two items deducted from the request for 1984 as adjustments to base.

The $5,309,000 for SLUC will be used to pay the General Services Administration (GSA) for space occupied by the Federal Bureau of Investigation throughout the country. The $5,381,000 will be used to continue the AIDS-III project and will provide for external studies and evaluations, equipment, etc. No workyears or personnel costs are associated therewith. The total amount of $40 million originally requested for 1984 is still the amount estimated to purchase the system; therefore, in its 1985 submission, the FBI has requested restoration of the $5,381,000 cut in 1984 and the date for the award of the contract for the system has been delayed until FY 1985.

Customs Narcotics Investigations

Do you believe that DEA lacks the manpower to conduct the investigations that our colleagues believe necessary?

DEA has sufficient manpower to investigate those interdiction cases which are felt to be worthy of this additional investigative effort. On numerous occasions individuals are arrested with minor amounts of drugs. These individuals are either levied with a fine or the case is turned over to local prosecution.

Why aren't the U.S. Attorneys prosecuting a greater number of the violators arrested by Customs and the Coast Guard? This is not a new issue but we need a clear response as it affects the morale of those agencies integrally involved in the drug enforcement effort.

The U.S. Attorneys have made substantial gains in FY 1983 in the prosecution of drug-related cases referred from Customs and Coast Guard. In 1983, we filed 423 such cases. This is an increase of 124 percent over the 189 cases in 1982. In addition, the declination rate of drug-related cases has dramatically decreased. The rate for matters declined by our offices dropped from 57 percent in FY 1982 to only 30 percent in FY 1983.

Of the declinations made by U.S. Attorneys during FY 1983, nearly half were due either to the availability of other disciplinary alternatives (civil or administrative) or for weak or insufficient evidence.

Motor Vehicles

Please supply for the record a chart that displays the following information on the passenger motor vehicles of the FBI, DEA, INS and Marshals Service: Number of vehicles? Average amount of mileage on vehicles? Vehicle with the most mileage? Number of vehicles with more than 60,000 miles? Vehicles out of service for last month in terms of vehicles and days? Number of vehicles to be replaced in 1985? Number of additional vehicles in 1985?

Agency	Number of Veh.	Average Mileage	Veh. Most Mile.	Number Veh. in excess 60,000 m.	Out of Service Vehicle/ Days	1985 Replace	Addi. Veh. in 1985
U.S. Marshals.	1,111	30,331	91,565	79	168/435	292	...
FBI........	6,612	39,354	154,590	1,913	2,993/1,048	1,550	150
DEA........	2,304	55,988	139,840	697	Unavail.	489[a]	28
INS........	3,461	50,000	376,638[b]	949	Unavail.	416	192
TOTAL......	13,488	N.A.	N.A.	3,638	N.A.	2,747	370

[a] DEA also estimates they will seize 200 usable vehicles.

[b] This vehicle is a bus, INS also possesses a passenger motor vehicle with 118,068 miles.

New OCDE Task Force in Florida

There is an increase of 35 positions in the Organized Crime Drug Enforcement areas for a 13th Task Force for Florida.

Does this mean that the Special South Florida Task Force is terminated?

What are other agencies, both within Justice and other Departments, budgeting for this new Task Force?

The South Florida Task Force was created for the purpose of directing a concentrated Federal effort at interdicting the illegal flow of narcotics into the United States. The Organized Crime Drug Enforcement (OCDE) Task Forces initiated in October 1982, are investigative task forces aimed at investigating and prosecuting criminal organizations and seizing the financial assets associated with these groups. The new OCDE investigative Task Force centered at Miami will complement the South Florida Task Force and pose no conflict with that operation.

It is important that the OCDE Task Forces enhance, not replace, existing Federal law enforcement efforts against drug trafficking. The Task Forces supplement the FBI, DEA, U.S. Customs Service, and the U.S. Attorney's efforts directed against organized crime groups dealing in drugs. The work of the South Florida Task Force will continue. DEA and U.S. Customs Service were the primary agencies involved in the South Florida interdiction program and their participation in the OCDE effort will certainly foster close coordination between the two programs.

The 13th Task Force will complete enforcement coverage nationwide under this multi-agency program. It has been the FBI's experience that the other 12 areas continually rely upon Federal agencies in Miami to support their efforts by lead coverage, electronic and physical surveillance. This area is critical to the success of the other 12 Task Force areas.

Regarding the resource budget for the 13th Task Force, the following chart reflects the Department of Justice's request. As for the other Departments, final decisions have not been made.

	13th Task Force ($000)	
	Pos.	Amount
Federal Bureau of Investigation.....	35	$2,427
Drug Enforcement Administration.....	35	2,401
U.S. Attorneys......................	27	1,196
U.S. Marshals.......................	1	61
TOTAL...............................	98	6,085

Comparison of DEA Agents/Metropolitan Police Offices (MPO)/FBI Agents

QUALIFICATION AREAS	DEA	MPO	FBI	HIGH PRIORITY PREFERRED SKILLS
Salary	$17,138 +25% AUO after graduation ($21,422)	$19,800/Adjusted October 1, 1983	$23,199, $29,000 after graduation including AUO	Pilot-DEA/FBI Law Degree-DEA/FBI Computer-FBI/MPO
Grade Level	[1]GS-7	Equivalent to GS 7-9	GS-10	Accounting-FBI/DEA Science-FBI Foreign Language-DEA/FBI/MPO
Education	[2]Bachelor's degree	High school or equivalency, pass written exam	BA/BS degree, special studies, pass written exam	Engineering-FBI Metallurgy-FBI
Age	21/Restricted to 35	21/30	23/35	
Physical Exam	Agency Judgment	*, Height - 5' Maximum 6'5", Eyes	*, Height - 5'4", Maximum 6'5"	
Training (Entry)	12/15 weeks, Glynco, GA, 1 year probationary	6-18 weeks	15 weeks, Quantico, VA, FBI Academy, 1 year probationary	
Citizen (MUST)	*, All citizens	*, District Residents only	*	
Assignments	All states/overseas	Local	Anywhere that the FBI needs service.	
General Experience	3 years experience	1 year as a policeman in a major police department	3 years experience or 2 years specialized	

*Required

[1] Adjusted according to qualifications.

[2] Not hiring with less than BA/BS degree.

°Valid drivers license required by all.

FEDERAL TRADE COMMISSION

STATEMENT OF JAMES C. MILLER III, CHAIRMAN

ACCOMPANIED BY:

- WALTER T. WINSLOW, DEPUTY DIRECTOR BUREAU OF COMPETITION
- CAROL T. CRAWFORD, DIRECTOR, BUREAU OF CONSUMER PROTECTION
- WENDY LEE GRAMM, DIRECTOR, BUREAU OF ECONOMICS
- JOHN H. CARLEY, GENERAL COUNSEL
- BRUCE YANDLE, EXECUTIVE DIRECTOR
- JAMES A. WILLIAMS, DEPUTY EXECUTIVE DIRECTOR FOR MANAGEMENT
- FREDERICK J. ZIRKEL, DIRECTOR, DIVISION OF BUDGET AND FINANCE

BUDGET REQUEST

Senator RUDMAN. Our next witness is James C. Miller III, Chairman of the Federal Trade Commission. The Commission is requesting $66.5 million in fiscal year 1985, an increase of $3 million over current funding.

Mr. Miller, you may introduce those at the table with you and read or summarize your statement, as you prefer. Your entire statement will be included in the record.

INTRODUCTION OF ASSOCIATES

Mr. MILLER. Thank you, Mr. Chairman. I am pleased to be here to discuss and explain our budget for fiscal year 1985. I am accompanied by Bruce Yandle, Executive Director of the FTC; Frederick Zirkel, our Chief Budget Officer; Walter T. Winslow, Deputy Director, Bureau of Competition, substituting for Mr. Timothy J. Muris who is ill; Carol T. Crawford, Director, Bureau of Consumer Protection; and Wendy Lee Gramm, Director, Bureau of Economics, and we have other FTC officials present here today in case they are needed.

BUDGET INCREASE

Mr. Chairman, our budget request for fiscal year 1985 represents very little change in real terms from the fiscal year 1984 budget. Specifically, as you noted, we asked for $66.5 million and 1,234 workyears, a nominal increase of $2.3 million in real increase and 3 workyears over the fiscal year 1984 appropriation. This represents additional demand on our consumer protection responsibilities for the airlines, presuming the Civil Aeronautics Board will go out of existence at the end of the year in accordance with terms of the Airline Deregulation Act of 1978.

SMOKING ON AIRPLANES

Senator RUDMAN. Are you not going to get into smoking on airplanes?

Mr. MILLER. That is an important issue and I think there is some carryover of the current rules about smoking and nonsmoking sections.

Senator RUDMAN. Will that be under your jurisdiction?

Mr. MILLER. Yes.

MAINTAINING COMPETITION MISSION

As you know, we have three major missions. Maintaining competition is one of our missions and we are asking for $30.4 million and 555 workyears to do that job. We will continue to investigate alleged restrictions on competition that include health care services, presuming that the Commission continues to have oversight responsibility for that area. We will continue our increased effort to find and eliminate restraints between direct competitors that raise prices or otherwise harm consumers. In addition, we will, of course, respond to numerous requests we have from Congress for commenting on the competitive impact of various proposed laws.

CONSUMER PROTECTION MISSION

We have asked for $32 million for the consumer protection mission and we plan to use those funds to work aggressively in educating consumers regarding their rights and businesses of their responsibilities under the consumer protection laws and rules we enforce; target our consumer protection activities on cases involving substantial consumer injury—particularly on cases involving fraud, systematic breach of contract, false or deceptive advertising and credit law violations; and provide resources to complete litigation and pending rulemakings in major program areas.

ECONOMIC ACTIVITIES MISSION

The $4.1 million we seek for the economic activities mission will be used to stress traditional emphasis on independent analysis and reporting on important issues concerning the economy. We are also going to complete studies of the automobile and life insurance markets that were asked for by Congress, and we will continue research on health care issues.

SAVINGS

Since assuming the Chairmanship of the FTC in October 1981, the workforce of the agency has been trimmed. Its annual expenditures have been contracted. In my judgment, the savings to be obtained from focusing priorities, and consolidating functions have largely been accomplished. This budget reflects those savings. However, I don't believe we can rest on our laurels.

We must work harder, we must meet all the challenges that we have before us.

In exercising our prosecutorial discretion in an intelligent manner, we must allocate carefully our law enforcement resources to those matters that provide the greatest net benefit to the American consumers.

While it is not the task of a law enforcement agency to be liked, an agency cannot be effective if it is not respected. Fomenting an unnecessarily antagonistic atmosphere is not an effective way to achieve compliance with the law, which is our primary goal.

I think the budget before you reflects our commitment to build on the significant headway we have already made in this area. By not being afraid to seek the views of others, we indeed have created a new and beneficial atmosphere for all people affected by our policies. Third, I should mention that we are going to make further improvements in the agency's operating efficiency. Steps have recently been taken to eliminate unnecessarily long delays in the Commission's decisionmaking processes.

We have also committed resources to reviewing ongoing Commission programs, to find ways of improving them.

REGIONAL OFFICES

The regional offices have been reinvigorated following discussions we had and the understanding we reached.

Senator RUDMAN. Let me ask you at this point how that is working out.

Mr. MILLER. I think it is working out very well. The regional offices are all fully staffed with perhaps a couple of exceptions; normal kind of turnover. There are directors in each regional office and I have recently visited several of the regional offices and would anticipate over the next few months having a second visit to all the regional offices.

Mr. Chairman, that really concludes my statement. I think the resources that are included in our budget are sufficient for us to meet our priorities in the congressional mandate that we face in the FTC. I would be happy to answer any questions you might have.

[The statement follows:]

PREPARED STATEMENT OF JAMES C. MILLER, III

CHAIRMAN

FEDERAL TRADE COMMISSION

Mr. Chairman and Members of the Subcommittee: I am pleased to have this opportunity to appear before you today to explain the Federal Trade Commission's budget for FY 1985 and to answer your questions.

Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices." Thus, we have a responsibility to ensure that American consumers are able to enjoy all the advantages of a vigorously competitive market, free of unfair, fraudulent and deceptive practices. In my opinion, the budget we are discussing today will permit us to carry on with this important work.

FY 1985 Budget Request

The FTC's proposed budget for FY 1985 represents very little change in real terms from its FY 1984 budget. This Commission-approved request is for $66.5 million and 1,234 workyears, an increase of $2.3 million and 3 workyears over its FY 1984 appropriation. These differences obviously represent mostly nominal rather than real increases, and assume an additional $250,000 and five workyears reflecting our assumption of airline consumer protection authority as a result of the sunset of the Civil Aeronautics Board on January 1, 1985.

The Commission's FY 1985 budget requests funding for the agency's three missions as follows: Maintaining Competition -- $30.4 million and 555 workyears; Consumer Protection -- $32.0 million and 599 workyears; and Economic Activities -- $4.1 million and 80 workyears.

Among other things, the $30.4 million we propose be allocated to the Maintaining Competition Mission will permit the Commission to:

* Investigate alleged restrictions on competition in the delivery of health care services, a major sector of the economy that has been characterized by rapidly rising consumer prices;

* Continue our increased effort to find and eliminate restraints among direct competitors that raise prices or otherwise harm consumers;

- Challenge anticompetitive mergers that could lead to higher prices, restricted production, diminished quality, or other harms to consumers;
- Assure compliance with outstanding Commission orders;
- Render advisory opinions, to increase business conformance with the laws we enforce;
- Respond to numerous requests from Congress for our assessment of the competitive impacts of proposed legislation; and
- Articulate the competitive consequences of proposed policy changes contemplated by regulatory agencies.

The $32.0 million we propose be allocated to the Consumer Protection Mission will provide for a strong program. Specifically, the Commission will:

- Work aggressively to educate consumers of their rights and businesses of their responsibilities under the consumer protection laws and rules we enforce;
- Target our consumer protection activities on cases involving substantial consumer injury -- particularly on cases involving fraud, systematic breach of contract, false or deceptive advertising, and credit law violations;
- Provide resources to complete litigation and pending rulemakings in major program areas and to monitor compliance with existing rules and orders;
- Investigate anticompetitive and unfair use of standards and standards-making procedures; and
- Work closely with both state and federal agencies to analyze the effects of their rules and regulations on the ultimate consumer.

The $4.1 million allocated to the Commission's Economic Activities Mission will be used to stress its traditional emphasis on independent analysis and reporting on important issues concerning the economy. For example, during the 1985 fiscal year, we expect the Economic Activities Mission to provide:

- Studies on the automobile and life insurance markets, requested by Congress;

- Continued research on health care issues.
- Targeting of areas of the economy needing special attention by our teams of investigators; and
- Continued support for the Commission's traditional law enforcement efforts.

Program and Management Efficiencies

Since I assumed the Chairmanship of the FTC in October of 1981, the agency's workforce has been trimmed and its annual expenditures have been contracted. In my judgment, the savings to be obtained from focusing priorities, streamlining procedures, and consolidating functions have largely been accomplished. Thus, this year's budget reflects what I believe to be the agency's optimal resource level.

While I believe this budget is fully adequate, I do not mean to imply that we can rest on our laurels, content that our management work is truly done. On the contrary, a significant challenge lies before us to find even better ways to deploy our resources in a continuing effort to improve agency-wide productivity.

As I recently stated before the House Subcommittee on Commerce, Consumer and Monetary Affairs, upon coming to the Commission I established a number of priorities to restore the agency to its proper role as an effective law enforcement agency.[1] Three of these priorities are directly related to our budget requirements. They are to:

- Improve the agency's allocation of resources, especially in law enforcement;
- Reduce the excessively adversarial relationship that had developed between the agency, the people it regulated, and the Congress; and
- Improve agency management, thus providing the taxpayers a better buy for their tax dollars.

Let me provide some specific examples of what I mean.

Improved Program Resource Allocation

In exercising our prosecutorial discretion in an intelligent manner, we must allocate carefully our law enforcement resources to those matters that provide the greatest net benefit to American consumers. To accomplish this objective, economic expertise is needed to assess the impact of various commercial and business practices as law enforcement actions are contemplated.

---

[1] Statement of November 9, 1983, p. 1.

Our FY 1985 budget request reflects the cost savings and quality increases of having economists integrated into the agency's enforcement activities at very early stages in the process. This approach improves case selection and increases the likelihood that our formal actions will be sustained by the courts. More importantly, this action ensures that we do not act in ways that harm the very people we are in business to protect.

The agency's regulatory analysis and intervention program is another activity where I see a large payoff from a rather small investment. The Commission has budgeted less than 30 professional workyears in FY 1985 (about the same as in FY 1983 and FY 1984) to provide testimony and comments on the competitive and consumer impacts of proposed legislation and regulatory actions. These presentations result from the combined effort of all three bureaus and are carefully selected to focus on matters where the potential consumer benefits are large or where the Congressional interest is great. I should point out that since the Commission's long-established intervention program draws upon experience and capabilities gained by staff in reviewing private actions, our actions in this area may be viewed as a valuable by-product of our more traditional law enforcement activities.

Reduced Adversarial Relationships

While it is not the task of a law enforcement agency to be liked, an agency cannot be effective if it is not respected. Fomenting an unnecessarily antagonistic atmosphere is not an effective way to achieve compliance with the law -- which, after all, is our primary goal. Such an atmosphere breeds mutual hostility and needlessly consumes agency resources.

The budget before you reflects our commitment to build on the significant headway we have already made in this area. By not being afraid to seek the views of others, indeed by actively seeking such views, we have created a new and beneficial atmosphere for all people affected by our policies. We will continue to invite consumers, small business, and other groups to share their ideas with us. We will continue to invite potential litigants to discuss and resolve their problems before protracted court battles become necessary. So long as compliance is achieved, we favor education and communication over litigation. By so doing, we believe the taxpayer resources made available to us will be far more productive in service of the public interest.

As one example, the effectiveness of this non-adversarial approach can be demonstrated in the results of a project we launched in our Consumer Protection

Mission to improve the level of compliance with the Truth in Lending Act by real estate credit advertisers.

In the course of this two-stage project, we surveyed real estate display ads in 58 newspapers in 42 metropolitan areas. When we began we found that the level of compliance was about 13 percent. Traditionally, the Commission would have used its resources to enforce this Act by suing a few large advertisers, hoping the example would bring others into compliance. This time we worked with the advertisers, notifying them of the violations and helping them to comply. In just one year, 2,400 companies changed their policies, and the overall level of compliance rose to 86 percent. Where companies have not come into compliance, we have initiated law enforcement investigations, and we expect to bring actions against those who refuse to comply.

Along the same lines, our White House Fellow has focused her energies on organizing 20 small business conferences all across the country. The objective of these conferences is straightforward: to educate small business firms about consumer protection rules and laws in a non-adversarial environment, thereby increasing compliance while reducing the need to rely on costly litigation.

There are, of course, many areas where the Commission must be prepared to litigate without delay: for example, in cases of fraud -- which we have pursued aggressively -- where voluntary compliance efforts have failed, or where a deceptive act or practice has caused or threatens to cause substantial harm. As our record clearly demonstrates, the Commission has not and will not hesitate to litigate in such cases. Nevertheless, we feel the objective of law enforcement is to achieve compliance with the law. Our performance therefore should be measured by the results achieved, not by how frequently we litigate.

Improved Agency Management

To further improve the agency's operating efficiency, steps recently have been taken to eliminate unnecessarily long delays in the Commission's decision-making processes. This budget assumes the benefits to be derived from more timely decision-making by the Commissioners themselves.

We have also committed resources to reviewing on-going Commission programs, to find ways to improve them. I have always believed it desirable to review existing policies and organizations to determine if changes are warranted, and I am encouraging agency managers to offer positive suggestions for improvement.

While discussing our efforts to improve the management of the agency, I would like to take this opportunity to thank you for your assistance in helping to work out last year's regional office compromise. I am glad to report that everything is going according to plan. The regional offices have been reinvigorated, are fully staffed, and are pursuing policies fully consistent with those established by the Commission.

Office space rent is one of the larger expenses incurred each year by the agency. In recognition of this, we have taken steps to reduce rental cost by better utilizing our present space and by proposing a consolidation of locations in Washington. The budget before you assumes we continue to occupy our current locations throughout FY 1985. Our objective of consolidating our five satellite locations into one building by the end of FY 1985 remains unchanged. As you may know, our space consolidation prospectus -- approved by GSA and by OMB -- now stands before the House Public Works Committee. We plan to continue to pursue vigorously this management initiative (as it is projected to save taxpayers approximately $10 million over a 10-year period), and we would be grateful for any assistance you might lend in this regard.

There is one last management initiative I wish to mention today. The FTC is a participant in the President's Executive Exchange Program. Our Exchange Executive has just completed an organizational analysis of all administrative support units. His recommendations, now implemented, have resulted in a number of internal changes that will improve support services, while freeing up resources to apply to our direct enforcement activities.

Concluding Remarks

Mr. Chairman and Members of the Committee: I hope you can see from our FY 1985 budget submission that the new Commission administration is determined to carry out its statutory mandate in a much more efficient manner -- indeed, with approximately 30 percent fewer resources than in FY 1981.

I feel strongly that the program and management initiatives just outlined will enhance our overall operating efficiency and that the budget before you is adequate for us to meet our Congressional mandate.

* * * * *

Mr. Chairman and Members of the Committee: that concludes my prepared statement. I would be happy now to respond to your questions.

CAB TRANSFER

Senator RUDMAN. In keeping with my philosophy on hearings—to try to keep hearings relatively short and answer those questions that I think it is important to have a dialogue on and then submit a number of questions for answers for the record—we will keep the record open until May 1 to give you sufficient time to do that.

I want to talk a bit about FTC authority in the area transferred from CAB. Would you undertake a transfer of those air regulations intact, or are you going to get the whole area?

Mr. MILLER. Let me say first, Mr. Chairman, it is our judgment, the judgment of the attorneys at the FTC, that for that transfer to take place there must be a change in our existing statute. That is, a change in our authorizing statute to eliminate exclusion presently enjoyed by airlines. The administration, I am informed, has no objections to that modification.

Senator RUDMAN. Is that presently under consideration?

Mr. MILLER. Yes, that is presently under consideration for possible adoption on the floor of the Senate, I understand.

Second, my idea is that we treat airlines like any other industry, that is, subject to the unfair methods and practices standard contained in the Federal Trade Commission Act.

I would see that, at least in the very short run, many of the rules and regulations of the CAB being carried over to the FTC. This could happen on an ad hoc basis, and there could be a statement by the FTC that it would presume that the compliance with those CAB rules would be consistent with the FTC Act, and deviation therefrom would be investigated. But, I would think that the Commission over the following year or so would undertake the rulemaking. We would prefer some expedited informal rulemaking process to address these issues, fine tuning the rules that currently exist at CAB. If necessary, we will probably place a small rulemaking notice in all of the airlines.

Senator RUDMAN. I think it would be great to get that done. If for some reason that were not to be done, we would have a real problem.

Mr. MILLER. Yes, because we would lack authority.

ANTITRUST IMMUNITY

Senator RUDMAN. Assuming all that happens, what about the antitrust immunity bill?

Mr. MILLER. I think that should remain. There are just versions of the legislation that I have seen that incorporate a transfer of the Board's present authority to immunize airlines from antitrust prosecution to the Justice Department. I don't have strong feelings whether it should also go to FTC. There are not many instances where antitrust immunity should be granted to airlines. Airlines often argue they would not be able to engage in ticketing baggage handling safely but for the antitrust immunity. Those kinds of processes I don't have any problem granting immunity for. I am not sure they require immunity though. I think that kind of provision makes some sense. Obviously, outright price fixing would not be immunized by the Justice Department and I think it will come under the purview of both Justice and the FTC.

Senator RUDMAN. Let me continue on antitrust for just a moment.

The Congress did adopt a very weakened version of what originally was proposed regarding oil merger legislation. Nevertheless, it is something that would have, in my view, a chilling effect on the industries, unless we somehow find that they don't make any difference, and the moratorium failed by a substantial vote.

There is concern that FTC obtains its interpretations of antitrust law under your administration. There is danger that, if you are wrong, that consumers can end up getting hurt.

ROLE OF FTC

What is your view of the proper role of FTC, and what do you think are going to be the long-term effects of the policy?

Mr. MILLER. Mr. Chairman, I think our rules and responsibilities to enforce the antitrust laws, and the nature of these laws, speaking broadly, have gone through an evolutionary process. I will be glad to furnish you with a copy of the address I gave to the antitrust bar.

Senator RUDMAN. We would like to have that.

Mr. MILLER. Consistent with this evolutionary process, we make the calls between those cases that have substantially lessened competition and tended to create a monopoly and those cases that do not. I would like the record to show that I am speaking generically and not about any particular merger. As you know, we have several before us.

Senator RUDMAN. I don't intend to get into any of those.

Mr. MILLER. The career staff of the Commission reviews these cases very carefully, and I think they are doing a fine job.

MERGERS

Senator RUDMAN. What is currently the deadline in terms of numbers?

Mr. MILLER. As I was saying, the staff reviews these matters very carefully and the Commissioners spend a great deal of time in making these kinds of cuts. Something that I think is perhaps not as appreciated as it might be, especially at the level of crude. The oil industry is not particularly concentrated and I would anticipate having many difficulties there because as you go on up the ladder, you find increasing difficulties.

It has been the view of the Commission and the view also of the staff that in a large merger where there are overlaps, the Commission's stance should be to accept the merger or not to take issue with the merger if, and only if, the companies would consent to do something about the overlap, spinning off assets or whatever. Signing a consent gives the Commission an opportunity to go to Federal court very quickly if the conditions of the consent order are not followed.

ANTITRUST POLICY

Senator RUDMAN. That raises a very interesting policy question, I think, indicating a need for decompartmentalizing some of the decisions that we are making in the area of antitrust. I was going to ask you that specific question. There is some evidence that leads us to want to get more information regarding doing the role properly, and handling it precisely in the divestiture. You could be doing things in that area that, although quite correct from the point of view of what you are compartmentalized to do under your statute, might have some deleterious effects in some other areas. I am talking about what we have seen in some of the recent reports on divestitures of retail outlets, in terms of national policy, who might acquire those assets, what might happen in that area, how you deal with that. What must we do to try to approach this in a unified way, hypothetically assuming, there could be real problems with divestitures which would be problems that you have no reason under your statutory charge to avoid?

Mr. MILLER. Mr. Chairman, you put the finder on it. I have great concerns about an open-ended kind of statute that allows this kind of weighing of a lot of factors by, say, an antitrust official. I think we do our best, cleanest job when we are enforcing the antitrust statutes alone. I think those kinds of interrelationships are best handled by the Congress itself. I realize in some instances on an ad hoc basis it is difficult to do that.

It is very difficult, in thinking about those kinds of things, for there to be a change of some sort for the antitrust officials to incorporate these nongermane or noncompetitive concerns requiring something of a resolution. For reasons that are understandable. Congress has guarded very jealously the independence of the FTC and has been wary of interference from the executive branch. The executive branch of Government has been at arms length with the FTC in all of the dealings we've had in the merger area and other case-related activities. But, if one could imagine involvement of, say, the Secretary of Commerce or the Secretary of Energy in our direct deliberations, that I think is something Congress would scrutinize carefully because it would be very different from the kind of operation we had in the past. I don't have an easy answer.

I am, as you probably know, very skeptical of the kind of orchestrating mechanism that border on industry policy and industry planning. I think perhaps the best solution is for us to grope along as we have.

ANTITRUST ENFORCEMENT

Senator RUDMAN. I think it is important to note that the reason many of us permitted the moratorium was, quite frankly, not because any of us thought we knew the answer, but because we thought there were a lot of questions, totally unanswered, not necessarily involving the narrow scope of the antitrust laws as they are written, as you enforce them, and as they are interpreted by the court. There are questions involving financial concentration, occupation of the credit market, and control of divested assets. Although I agree with you completely, I fear that we are not to be setting forth industrial policy. It seems that something has been looked at and that was the concentration. It wasn't the concern that FTC wasn't doing its job, but there are many unanswered questions. There are some serious implications, far beyond those that you look at, involved with these mergers.

Mr. MILLER. I think Senator Dole's approach may well answer many of the questions, and they are legitimate issues to address.

RESALE PRICE MAINTENANCE

Senator RUDMAN. I suggest that when they do start hearings in these areas that we address some of these questions.

I talked to you briefly about resale price maintenance. I have had an opportunity recently to study a couple of memoranda on the subject and I want to ask a few questions on that. I understand that you may have a slightly different definition of RPM than I, and I am not saying whether it is right or wrong. I want to understand the issue.

The memoranda state that many vertical restraints hinder a retailer's attempt to set prices without becoming a price restraint. The test appears to be whether or not the restraint is efficient. Apparently, if, according to your models and theories, a restraint is efficient, no matter how great the impact on a retailer's ability to set prices, it will be defined as a nonprice vertical restraint.

Is that accurate?

Mr. MILLER. I don't know the memoranda you are quoting from. My view is that we follow the law as put down by Congress and interpreted by the Supreme Court. As you know, in the *Monsanto* case the court handed down a decision that said Colgate was alive and well and reaffirming the decision in *GTE-Sylvania* handed down in 1977. And in a sense, to protect both of those doctrines, the Supreme Court went on to say you must have strong evidence of an agreement with respect to price to apply the per se rule. That is the law.

I think in the wake of the court's decision in *GTE-Sylvania* most of the distributional needs of a manufacturer can be accomplished through nonprice means using perhaps the Colgate doctrine. In fact, it is very unlikely you will find per se violation of the antitrust laws with respect to RPM. People who engage in that are either dumb, or they have not gotten very good advice, or they are terribly underestimating the language.

Now, I can understand the discomfiture of some retailers over business practices that are immunized under the Colgate doctrine. In fact, most of the complaints that we hear from the retail sector are about activities that under the *Monsanto* decision would not be judged as per se violations. On the other hand, what the Supreme Court has said is that these would be judged on a rule of reason basis, which is to say on balance that this arrangement increased competition or the pro-competitive aspects greater than the anticompetitive aspect.

Senator RUDMAN. Because of the rapidly changing technological world in which we are living, in terms of the kind of products that we are talking about, perhaps if in fact the Commission or the Justice Department sees some reason to change the law, I really think it ought to be done here. I am not suggesting anyone has been changing it. I am reading some of these memoranda and I get the distinct impression that it is rather difficult in some cases to do what you think you ought to do, or not do, or what you think you are supposed to do, because of the state of the law.

Mr. MILLER. I think we are very much following the law. I think we are following the dictates of the courts and righting other cases of alleged vertical restraints.

THE BOULDER DECISION

Senator RUDMAN. Let me go on to a far more mundane but current question. The Supreme Court has said that local governments are not immune. I agree with that decision, although a lot of people around here don't. Senator Thurmond introduced legislation sponsored by 16 Members of the Senate which will overturn that decision. Have you taken a position on that legislation?

Mr. MILLER. Yes, sir. The *Boulder* decision did cause a great deal of consternation and I think we are in agreement it was a good decision. It is good law. Testimony before the House Judiciary Committee on the various proposals surrounding research of joint ventures indicated that the courts' interpretation of the law is somewhat in a state of flux, that the courts overall have been very tolerant in looking towards the leadership of the community and social redeeming effects of any kind of arrangements they have and targeting only the anticompetitive commercial dealings of a city for possible prosecution under the antitrust laws.

So, I would suggest we give this issue a little more time before the Congress acts.

Senator RUDMAN. So would you oppose Senator Thurmond's legislation at this time?

Mr. MILLER. I think it is premature.

TAXICAB LICENSES

Senator RUDMAN. I want to go from the general to the specific and talk about taxicab licenses about which I received a lot of calls. There is a study almost completed on the subject and there is some question as to the limitation of the number of licenses issued. It has made the price of those licenses like a shield, very very expensive. Sometimes they are worth $60,000 a copy.

How close are you to finishing that study?

Mr. MILLER. This is obviously a very sensitive area for us. We have been coordinating somewhat with the Department of Transportation. DOT, as you know, has an interest in the efficiency of urban transportation, which depends on the taxicab market as well as rail, buses and other alternatives.

We have, as you noted, a study looking at the law as well as the economics of taxicab regulations by states. We have found tentatively that in some instances the State, the local community. would fall under a reasonable interpretation of voluntary customer in some communities. In other instances they would not. I realize this is very sensitive but I would anticipate that we would come forward with a case or two in this area. I think we will handle this in a very sensible way. I think we will discuss the issues with the cities involved and discuss ways of solving the problem short of formal litigation. But if formal litigation is necessary, I think we should move forward there. In some instances there are rather substantial costs born by consumers by virtue of the collusion sanction, and I think, just as we find reason to attack collusion in other commercial markets, I don't think the taxicab market should be excluded from that supervision.

TAXICAB STUDIES

Senator RUDMAN. How do you feel about the studies being done that conclude that deregulation has been very disruptive and, in fact has increased prices and reduced demand for taxicabs, rather than its intended effect which was to increase competition, to provide better service, and to lower prices?

Mr. MILLER. I am not aware of those studies. I want to point out that Commissioner Douglas, when he was in academia, did a paper on the taxicab markets and we have had a consultant or two who have done work in that area. Most of them come to the conclusion there is a rather substantial cost for the institutional arrangements. As you know, in the city of Washington there is price regulation but there is no quality regulation and no quantity regulation, and it is often said that Washington has one of the best if not the largest city taxi systems.

Senator RUDMAN. Certainly, you have to speak 13 foreign languages.

Mr. MILLER. I do not know of the study you are talking about.

RESULTS OF ANTITRUST ACTIONS

Senator RUDMAN. We will get a copy of it for you.

I am going to wind this up; the appropriations questions are fairly specific. When I look at this whole antitrust area, I am convinced history will prove we ended up with precisely the situation which the antitrust laws were intended to produce. People have a hard time affording telephone service in rural areas. Poor people, retired people, and young couples are going to be paying considerably more for the telephone. Businesses are in fact going to pay a lot less. In my view, there is going to be a deterioration of the quality of phone service at reasonable prices to the average citizen.

I have talked to many economists and lawyers who privately will say that the *AT&T* case is going to end up with precisely the opposite effect we intended in antitrust. I know what is happening in my own State; in 5 or 6 years a lot of people are not going to be able to afford telephones. After all, it was a very well-regulated monopoly. We have another monopoly in the taxicab business and I hope we don't end up with success in court, success in administrative practices, and deterioration of taxicab service.

Mr. MILLER. Mr. Chairman, I think you make an important point. Obviously, I cannot discuss fully the merits of the *AT&T* case with you. However, I can say that I will make sure on any issue we take in the taxicab market at the FTC that we will analyze the facts fully, and base our decisions and recommendations on the economics as well as the law.

Senator RUDMAN. I don't think this is an area in which you ought to move rapidly until you are convinced you are going to have the desired effect. I think that opinion is shared by a lot of people.

I appreciate your coming up this morning.

SUBMITTED QUESTIONS

The committee has additional questions which we will ask you to answer for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

LINE OF BUSINESS PROGRAM

Question: What is the LOB program, and is the information it gathers available from other Federal agencies? What would be the savings associated with the elimination of this program?

Answer: The Line of Business (LB) program was created to collect data by line of business from the nation's largest manufacturing firms. Unlike data collected by other Federal agencies, the LB data were designed to produce estimates of costs and profitability for individual manufacturing industries. Because the program was costly both to the Commission and to industry, the Commission decided in late 1981 to suspend further data collection pending an analysis of the costs and benefits of the program. Accordingly the workyears devoted to the program were reduced from 30 to 14 in fiscal 1982 and were further reduced from 14 to 12 in fiscal 1983.

After two and one half years of exhaustive study the Commission voted on April 11, 1984, to collect no further LB data. The Commission did, however, vote to continue to support policy related research with the existing data, and the 12 workyears associated with the program will be devoted to that end.

1984 SUPPLEMENTAL

Question: The FTC is requesting $650,000 for a pay supplemental in FY 1984. Is this the Commission's full need? If not, where will the remaining need be absorbed?

Answer: No, our full requirement for fiscal 1984 is twice that of our supplemental request or $1.3 million. The Commission is able to absorb half of this amount without impacting its programs by using a portion of the additional $1.0 million appropriated by Congress for the FTC in fiscal 1984.

REGIONAL OFFICE STAFFING

Question: What are the current staffing levels at each of the ten regional offices? Does the FY 1985 request assume the 1984 levels at each office?

Answer: The regional office workyears are as follows: Atlanta 18, Boston 17, Chicago 18, Cleveland 18, Dallas 18, Denver 8, Los Angeles 18, New York 18, San Francisco 18, and Seattle 18, for a total of 169. There is no change in these levels between FY 1984 and FY 1985.

CAB TRANSFER

Question: The 1985 request assumes a transfer of $250,000 and 5 workyears from the Civil Aeronautics Board. Without apppropriations bill language, how can this transfer be accomplished?

Answer: Absent enabling legislation, the FTC would be precluded from exercising any unfairness or deception authority over air carriers, therefore, we could not accomplish the CAB transfer.

TRANSFER OF CAB FUNCTIONS

Question: (a) Does the FTC believe legislation is needed to remove the prohibition under Section 5(a) and explicitly empower the FTC to perform airline consumer protection functions?

Answer: Yes. A legislative repeal of the exemption for "air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" in Section 5(a)(2) of the FTC Act is needed to empower the Commission to perform airline consumer protection functions under Section 5.

Question: (b) If legislation removing the prohibition is not enacted, could it be argued that the FTC is acting beyond its mandate, if it seeks to carry out some aspect of CAB's current consumer protection functions?

Answer: Without legislation removing the exemption for air carriers in Section 5(a)(2), it could be argued that the Commission was acting beyond its mandate if it attempted to regulate air carriers under Section 5 of the FTC Act.

Question: (c) If the prohibition under Section 5(a) of the FTC Act were to be removed either by inference or legislation, will further legislation be needed to give FTC the authority to assume CAB's existing or pending airline consumer protection regulations?

Answer: If the exemption for air carriers were to be removed from Section 5(a)(2) of the FTC Act, the Commission, in the absence of further legislation, could assume the CAB's consumer protection regulations only if the FTC promulgated pending regulations or repromulgated existing regulations in accordance with applicable rulemaking requirements in the FTC Act. Rules addressing "unfair or deceptive acts or practices" would have to be promulgated in accordance with the "Magnuson-Moss" procedures prescribed by Section 18 of the FTC Act.

TRANSPORATION COMPETITION PROGRAM

Question: The justification states on page 4, "The Commission will continue its efforts to apply antitrust and competition principles to the transporation sector in light of the magnitude of the sector's impact on inflation and thus on consumers." What specific activities does the Commission plan in this area?

Answer: While it is difficult at this time to forecast the precise investigations, cases, and other activities that will make up this program during the 1985 Fiscal Year, the principal fields of activity we expect to pursue include active monitoring of proceedings before other agencies, including the Interstate Commerce Commission, which may have impacts on transportation competition, and presentation of competition concerns in such proceedings as appropriate; and investigation and possible litigation concerning anti-competitive mergers, collusive practices, and other restraints of trade in the transportation and related industries. The latter activity will include continued close scrutiny of competitive conditions and practices in the automobile industry, and of the competitive impact of regulations affecting that industry. Depending on the legislative resolution of the issue of the current exemption for the air transport industry from Commission authority, we may become active in that sector after "sunset" of the Civil Aeronautics Board.

INTERNATIONAL ANTITRUST

Question: The Commission proposes to reduce the International Antitrust program by 2 workyears and $77,000. What activities will be reduced or eliminated due to this cut?

Answer: To a substantial extent, this projection reflects the impact of completion of the resource-intensive General Motors/Toyota joint venture proceeding. We do not anticipate that it will result in a need to curtail any areas of program activity. Should circumstances arise that call for greater activity in this program, we would anticipate these needs can be met by reprogramming from areas where requirements have been less than expected.

PROGRAM REDUCTIONS

Question: A number of programs assume no change in workyears for FY 85, while projecting a net decrease in funding. These include Other Direct Mission (p. 28), Service Industry Practices (p. 43), Economic and Regulatory Analysis (p. 45), Other Direct Mission (p. 47), Commissioners (p. 57), Executive Director (p. 58), Office of Public Affairs (p. 60), Planning and Information Services (p. 66), and Office of the Secretary (p. 68). Such reductions are commendable, but the Committee would like to know in each case, how they are to be accomplished.

Answer: Other Direct Mission Resources (MC) - There is a proposed reduction of $99,000 in this particular program area. At the beginning of 1984, the regional offices were provided additional funds for needed clerical support. However, we do not foresee this temporary clerical shortage extending into 1985.

Service Industry Practices - The minor program reduction of $2,000 reflects a decrease in contractual requirements in fiscal 1985.

Economic and Regulatory Analysis - This $124,000 drop represents a change in program contract needs. The fiscal 1985 activity in this program does not require the same level of contract support as in fiscal 1984.

Other Direct Mission Resources (CP) - The $135,000 difference represents a decrease in salaries and benefits associated with no longer needed temporary clerical staff in the Regional Offices. There are also some minor reductions in travel and printing expected in 1985.

Commissioners - This $130,000 difference reflects a decrease in personnel compensation. Specifically, selected temporary professional positions will not require a full year's funding in 1985 as they did in 1984, i.e., White House Fellow and Executive Exchange positions.

Executive Director - The $15,000 difference in this program area assumes a slight decrease in personnel compensation resulting from a change in skill mix (i.e., more clerical, fewer professionals).

Public Affairs - This $142,000 drop represents a decrease in personnel compensation. Because of workload demands, the Office of Public Affairs has been staffed above ceiling in 1984; it is expected that staff will be reduced through attrition in 1985.

Planning and Information - This $373,000 reduction stems primarily from a decrease in contractual service requirements for outside ADP processing because the majority of ADP applications will be processed on in-house computers.

Office of the Secretary - This $16,000 drop reflects lower personnel compensation costs as a result of minor skill mix changes.

FY85 ACTIVITIES

Question: On page 31, the justification states, "In fiscal 1985 efforts will focus on completing carry over initiatives and reacting to new instances of fraud concerning the marketing of fire protection devices, vacation time-sharing, business opportunities, and small business computers." What are the problems in each of these areas, and how is the FTC responding?

Answer: The Commission has identified a number of problems concerning the marketing of the products and services described above. With respect to fire protection devices, we are concerned both with the safety risks as well as the economic injury caused by misrepresentations concerning a product's ability to assist in the detection of and escape from fire. We are also concerned about omissions of facts that may pose danger to consumers or mask important product limitations. The Commission has filed an administrative action against one manufacturer of such devices, Figgie International, charging that Figgie misrepresented the attributes of a "heat detector" sold by one of its subsidiaries as part of a residential fire alarm system. In addition, a consent order was entered against a marketer of smoke masks based on alleged misrepresentations concerning the capacity of the masks to screen out deadly gases. Other investigations are ongoing.

In the vacation timeshare industry, the Commission staff is concerned about misrepresentations concerning the timeshare property itself, costs associated with maintaining the property, exchange privileges, and like matters. Lawsuits have been filed against developers who misrepresented their properties. Other investigations are ongoing. In addition, the Commission has developed a consumer education pamphlet to help consumers who are considering a timeshare purchase.

In the business opportunities area, in addition to enforcement efforts related to the Commission's franchise rule, the staff is concerned about misrepresentations concerning the marketing of business opportunities that do not come under the franchise rule, as well as the deceptive marketing of multi-level marketing organizations. To this end, the Commission has filed suit against a Minneapolis-based concern, alleging that the company and its principals breached contracts with consumers who invested $24,000 each for the privilege of serving as subcontractors for the company. Other investigations are ongoing.

With respect to small business computers, the staff is concerned about misrepresentations concerning the capacity of the machines, availability and compatibility of accessories and software, and the performance of warranty promises. Several investigations are ongoing.

EFFECTS OF REGULATION ON COMPETITION

Question: The Commission will initiate a new study in the Economic Policy Analysis program, effects of regulation on competition; possible topics include competition in service industries and the effects of antitrust policies on entry and life cycle issues. What would be the issues addressed in each area and how would the study be conducted?

Answer: The proposed study of competition in services industries would analyze the state of competition in one or more locally regulated services industries, such as trash collection, taxi services, liquor retailing, or ambulance services. It would investigate how performance in these service industries varies across localities that use different forms of regulation. The Commission has a long-standing interest in this area that parallels its interest in laws that restrict the business practices of professionals. This proposed study could lead to law enforcement activities or provide information of use to states and local governments, comparable to the model drug product selection act previously proposed by the Commission.

The proposed study of the effects of antitrust policies on entry and life cycle issues would analyze the effects of vertical restraints upon the ability of manufacturers to induce retailers to provide consumers with information about their products at various stages of the product life cycle. It would compare the relative effectiveness of measures such as direct payment for retailer services, restricted or exclusive distribution, and resale price maintenance.

Due to insufficient staffing, neither of these studies has been formulated in detail. Whether one of them is actually developed in fiscal 1985 will depend upon the availability of staff and other resources.

ECONOMIC EFFECTS OF REGULATION

Question: The Commission also intends to initiate a new study on the economic effects of regulation. Possibilities include a study of the licensing of tradesmen and a study of the airline rate structure in the North Atlantic. What would be the issues addressed in each area and how would the study be conducted?

Answer: The Commission has no current plans to study the airline rate structure in the North Atlantic. Regarding tradesmen, the Commission has been active in recent years in examining the competitive effects of regulation of the business practices (not the licensing) of professionals. Similar competitive issues arise in the regulation of business practices of tradesmen. No study has actually been designed at this point.

POSSIBLE ECONOMIC STUDIES IN CONSUMER PROTECTION

Question: The Commission also intends to initiate a new study in the consumer protection area (p. 54). Of the four alternatives under consideration, what would be the issues addressed in each area and how would the study be conducted?

Answer: None of the listed studies have been designed at this point. The list represents areas of opportunities that we plan to explore with available resources. The idea for a credit market study was based on the availability of survey data from the FRB/FTC survey of consumer finances. These data may provide us an opportunity to look at credit issues of interest to the Commission in the enforcement of the credit statutes. The reputation study would attempt to better understand when market reputations could be relied on to discipline markets, as opposed to situations in which FTC action might be needed.

The liability study would attempt to study state liability policies to better understand the options the Commission faces in its fraud and product defects programs. The contract study would attempt to use information on credit or rental contract restrictions that vary by jurisdiction, in order to gauge the effect of remedies the Commission has considered in Credit Practices rulemaking and other rulemaking. Finally, advertising is a traditional area of activity for the Commission and one where we are attempting to better understand the limits of market self-enforcement.

ADDITIONAL WORKYEAR FOR B/E OFFICE OF THE DIRECTOR

Question: An additional workyear is being proposed for the Office of the Director, Economic Acitivies Mission. What, specifically, will be the duties associated with this position?

Answer: The additional workyear is proposed for the office of the Director for an attorney who would provide a legal perspective to economic analysis and improve coordination between the economic and legal bureaus.

AUTOMATED RECORD KEEPING SYSTEM (OSCAR)

Question: The Commission is establishing an automated record keeping system (OSCAR) in the Office of the Secretary. How will the system work, and what are the costs associated with its implementation? What increases in productivity and efficiency will occur with the use of OSCAR?

Answer: The OSCAR system is designed to create electronically most of the records of Commission activity which are now kept manually in the Office of the Secretary. All documents passing through the Office of the Secretary, including recommendations for action from the staff to the Commission, circulations among the Commissioners, and all filings in adjudicative matters, will be recorded as soon as they are received. It will be possible to check instantaneously the status of any given document at any time (e.g., whether the Commission has acted on a staff recommendation, what the vote was, etc.).

The system is also designed to produce accurately and quickly ad hoc reports on FTC activity to respond to inquiries such as those posed by congressional oversight committees (e.g., in how many instances in the last three years has the Bureau of Competition recommended the issuance of a complaint which the Bureau of Economics has opposed). Finally, the system will permit the writing of minutes memorializing Commission action more quickly.

The original cost projection for OSCAR was approximately $124,061. This included $76,345 in personal services (in addition to routine personnel expenses in the Office of the Secretary), $38,716 for equipment, and $9,000 to train Office of the Secretary personnel to use the system. While the design of the system is emerging in a somewhat modified form compared to the initial concept, the final total cost will probably not vary significantly from the original estimate.

It is interesting to note that some increases in efficiency have been achieved simply by planning for the introduction of the OSCAR system. The preliminary study of operations in the Office of the Secretary uncovered much duplication in record keeping which has been eliminated. Efficiency and productivity are expected to be further enhanced by the introduction of OSCAR in two ways: paper will be processed and information gathered and accessed more quickly, and the Office of the Secretary will be able to function smoothly without any additional personnel even were Commission activity to experience substantial increases in volume.

The following will be measured to determine whether these goals are actually met:

1. the average time to assign a staff recommendation to a Commissioner for presentation to the Commission;
2. the average time needed to produce a draft minute of a Commission meeting;
3. the time needed to produce a list of all formal complaints issued by the Commission since October 1, 1965, and the date of each complaint;
4. the time needed to ascertain the locations of all files established in a non-public investigation which resulted in the issuance of a formal complaint;
5. the time needed to determine how much the Bureaus of Competition and Consumer Protection have spent in the current fiscal year on reporting services; and
6. the time needed to calculate the number of investigations converted from initial phase to full phase in a given fiscal year.

STANDARD LEVEL USER CHARGES

Question: The General Services Administration is proposing an increase of $2.5 million for Standard Level User Charges (SLUC). What will be the cost per square foot for SLUC in FY 1985, compared to FY 1984? Provide a list of FTC space utilization (including the regional offices) and the cost per square foot in FY 1983 and FY 1984, and the proposed rates in FY 1985.

Answer: The average rate for SLUC costs is estimated to be $16.74 per square foot in fiscal year 1985, up from $9.49 in fiscal year 1984, a 76% increase. The following table summarizes the space configuration and rates for the years included in the fiscal year 1985 budget:

FEDERAL TRADE COMMISSION
Summary of SLUC Charges

	FY 1983		FY 1984		FY 1985
	square feet (thousands)	Rate	square feet (thousands)	Rate	Est. Rate
OFFICE SPACE:					
Washington, D.C....	343	$10.59	343	$10.94	$18.82
Regional Offices...	100	12.33	98	11.58	15.27
Parking, Warehouse...	42	3.29	44	3.55	4.39

OTHER SERVICES

Question: The object class "Other Services" will be reduced by $1.1 million in 1985. What specifically, will be the programmatic and other reductions associated with this cut?

Answer: The major reduction in "Other Services" occurs in contract accounts. For example, as a result of some recent computer equipment purchases we are now able to do more in-house processing. This change will reduce our need for ADP contract funds. However, sizeable reductions are also scheduled to take place in the area of program contracts. Based on our most recent experience, the agency's overall 1985 contract figure appears extremely tight and could require a reevaluation before the Commission finalizes its 1985 operating plan.

EQUIPMENT

Question: The object class "Equipment" has declined from $1.3 million in FY 1983 to $173,000 in FY 1985. What will the $173,000 be used for in 1985? What were the funds for in 1983 and 1984.

Answer: The $173,000 budgeted for 1985 will be used to purchase library books ($100,000) and to replace worn out operating equipment ($73,000). In 1983, we purchased a substantial amount of formerly leased word processing equipment based upon a detailed lease/purchase analysis that indicated purchase to be a more economical long run approach. In addition, a large amount of ADP equipment was purchased to improve service and to avoid high outside contract cost for ADP processing services.

REAUTHORIZATION

Question: The proposed appropriations bill language of the Commission removes the proviso attached in FY 1984 restricting the FTC's rulemaking authority in the absence of reauthorization. Does the Commission support appropriations being made available irregardless of an FTC reauthorization act being passed by the Congress?

Answer: The FTC favors enactment of an FTC reauthorization act at the earliest possible time. The Commission now favors retention of the provisos attached in FY 1984.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

REAL ESTATE STUDY

Question: On April 3, the Washington Post ran an article regarding an unpublished staff study of the real estate industry that was completed in January of 1981. The study apparently concludes that there is a lack of price competition in real estate brokerage fees and barriers to the free flow of information to consumers. Does the FTC intend to release this study in the near future? Based on the recommendation contained in the study, does the Commission plan to take action to correct these alleged abuses?

Answer: A joint bureau task force has completed its review of the study and accompanying appendices and the bureau directors of all three bureaus have recently forwarded a recommendation to the Commission that the study, as revised by the task force, be released. This recommendation is based on the assessment that, despite some serious flaws, the study will encourage informed debate about the state of competition and consumer protection in the real estate industry. While the study does point to a number of possible consumer protection and competition issues in the real estate industry, the staff believes that the study does not contain sufficient information upon which to base any immediate law enforcement initiatives. The Commission's Bureau of Competition already has some nonpublic investigations in the real estate area, although these are not directly related to the study.

AD SUBSTANTIATION

Question: Several weeks ago, the Commission staff submitted a report and policy recommendation on the FTC's ad substantiation program. Explain for us, if you would, how the program currently works and how these recommendations would change it, if they are adopted.

Answer: The ad substantiation program implements the Commission's requirement that advertisers and advertising agencies possess and rely on substantiation consisting of a reasonable basis for objective claims, and that they possess such substantiation before the claims are disseminated.

The proposed policy statement reaffirms the agency's strong commitment to the underlying legal requirement--that advertisers and their agencies have a reasonable basis before their claims are disseminated. Thus, there is no change in the legal requirement.

The policy statement would make several modifications regarding operation of the program.

First, the procedures for obtaining substantiation would be clarified. In the past, the Commission has sought substantiation in two different ways: on an industry-wide basis, by issuing requests under Section 6(b) of the Act to a number of firms within one industry (called "rounds"), and on a case-by-case basis, by sending a specific request to an individual company. After analysis of the public comments, and the Commission's experience with 6(b) orders, the staff concluded that use of industry-wide, 6(b) orders imposes substantial costs on the Commission and the private sector without commensurate enforcement benefits. For example, the last five "rounds" conducted by the Commission, in 1979 and 1980, produced no deceptive advertising cases. Accordingly, the staff recommended that the Commission continue to rely, as it has in the recent past, on requests for substantiation based on an informal letter seeking access, or a formal civil investigatory demand. Such individual requests could, of course, be sent to several members of an industry in appropriate cases, so the Commission would not in any way diminish its ability to proceed against deceptive advertising should it occur industrywide.

Second, the policy statement would articulate publicly, for the first time, the instances where the Commission will consider evidence developed after the claim was disseminated ("post-claim" evidence). As a matter of discretion, the FTC has considered post-claim evidence, but it has never articulated publicly the circumstance in which it will, and will not, consider such evidence. Thus, there would be no substantive change, but there would be an explanation of when we do consider post-claim evidence. This public explanation will ensure that all industry members are operating with the same knowledge of FTC procedures.

The four instances where the Commission has considered, and will continue to consider, post-claim evidence are:

1) when evaluating the truth of a claim;

2) when assessing the reasonableness of an advertiser in relying on the prior substantiation it did have;

3) when deciding whether there is a public interest in proceeding against a firm; and

4) when deciding the scope of an order to enter against a firm that lacked a reasonable basis prior to disseminating an advertisement.

Third, the policy statement would articulate the factors to be considered in evaluating the reasonableness of an advertiser's prior substantiation. These are factors that the Commission has previously considered--the type of claim, the product, the consequences of a false claim, the ease of developing substantiation for the claim, the amount of substantiation experts in the field would consider reasonable, and the benefits of the claim if it turns out to be true.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

DOLLAR SAVINGS TO THE CONSUMER

Question: How much did the FTC save the consumer in fiscal 1981 vs fiscal 1983?

Answer: One measure of savings to consumers is restitution, or redress. The Commission often orders defendants to redress consumer losses as part of the settlement of cases. The amount of redress, in cash or merchandise, received by consumers in fiscal year 1981 was $17,000,000. In fiscal year 1983, $18,500,000 was paid to consumers. However, the most accurate measure of the Commission's effectiveness in obtaining redress for consumers is the amount of redress ordered by the Commission in 1981 and 1983. In fiscal year 1981, $15,274,492 in consumer redress was ordered by the Commission. In fiscal year 1983, $30,375,000 in consumer redress was ordered by the Commission.

While this is the most readily comparable savings figure, we would point out that the Commission saves consumers money in a number of other ways. For example, recently the Commission has been aggressively seeking preliminary and permanent injunctions to stop ongoing fraudulent activity, particularly in the commodities investment field. In just seven investment fraud cases filed in fiscal years 82 and 83, the Commission has prevented future consumer losses of approximately $215 million (based on the annual sales of the fraudulent schemes) and we also expect to obtain significant consumer redress from some of these cases. Similarly, one of our intervention projects before ICC initiated in June, 1982 is credited with saving tens of millions of dollars in regulatory expenses, a saving we believe is ultimately passed on to consumers.

Finally, the realization of consumer savings from antitrust activity is, in very large part, measured by what does not happen to the prices of goods and services. At the same time, the realization of such savings is the one fundamental goal of all of that mission's activities, whether these savings come in the form of lower prices, price increases prevented, or producer innovation which brings additional value in the form of new or better products. The goal of the present FTC administration has been and remains to bring this ultimate goal directly and forcefully to bear on its case selection process, through intensive economic analysis, and to forego any temptation to use that process to pursue goals other than consumer welfare. In a given case, this analysis may yield the conclusion that a complaint must be issued to forestall a dangerous accretion of market power (the power to raise prices above competitive levels) or that the activity under scrutiny should not be prevented because it will result in efficiency gains that will lower costs and, through competition, prices. Error in either direction (under-enforcement or over-enforcement) will cause losses rather than gains to consumers. We have every reason to believe that our increased attention to the study of the actual effects of industrial behavior has resulted in decisions that are better for the consumer.

INSURANCE STUDIES

Question: Please describe the nature of the congressionally-requested studies of insurance that requires 2 additional workyears for Economic Policy Analysis in fiscal 1985.

Answer: Three studies, requested by Congress, will be completed in FY 85:

1) A life insurance study will investigate the advantages and disadvantages of each of the types of life insurance policies being offered by private insurance companies and the adequacy of information made available to consumers by insurance companies respecting the policies.

2) An information and auto insurance study will address the availability and utility of information furnished consumers before the purchase of automobile insurance.

3) The auto rate bureau study will investigate the impact of State insurance rate bureaus and other collective rate-making practices on competition and consumers with respect to property and casualty insurance for automobiles.

AUTO EXPECTATIONS STUDY

Question: In the same area, what are "studies of auto expectations" and how much staff time is to be assigned to such studies?

Answer: The auto expectations study measures consumer expectations of automobile reliability and repair costs. The study is directly relevant to the automobile defects program. Cases are brought under this program under the assumption that consumers frequently have faulty expectations of the reliability of the automobiles they purchase. However, very little direct evidence is available on the degree to which consumers have such mistaken beliefs. The study would thus be valuable in developing case selection criteria for this program. A maximum of one staff year is budgeted for this study in fiscal 1985.

NEW COMPETITION STUDIES

Question It appears that the FTC is stretching for things to do with regard to the new competition studies to be initiated in fiscal year 1985. Among the possibilities described on page 52 for study is "an evaluation of the stock market's assessment of the competitive impact of mergers." Isn't that what we have an SEC around to assess? How much is budgeted for new studies in fiscal 1985.

Answer: The effect of mergers on competition is primarily a concern of the FTC, not the SEC. Recent research has suggested that changes in the stock market prices of merging firms and of other firms in the same industry can be used to help determine whether mergers increase productive efficiency or have anti-competitive effects. The proposed study would be useful in assessing the effects of past and prospective FTC merger cases upon competition in the industries concerned.

One professional work-year has been budgeted for new competition studies in fiscal 1985.

ATTORNEY POSITION IN BUREAU OF ECONOMICS

Question: We apparently have swung so far into economics that the director requires someone to give him a legal perspective for economic analysis. Why can't he get that from the lawyers on the general counsel's staff?

Answer: The Commission has always analyzed policy issues from both a legal and an economic perspective. More recently, however, there has been an increased emphasis on analysis that melds the perspectives of both fields, and this has required increased cooperation between the economic and the legal bureaus. Because the Bureau of Economics is located across town from the headquarters building, day-to-day coordination is sometimes difficult to achieve. Both the Bureau of Competition and the Bureau of Consumer Protection have attempted to solve this problem by hiring several economists. Having an attorney present in the Bureau of Economics should further improve coordination.

BANKRUPT COMPANIES

Question: How many of the cases that you are investigating or prosecuting involve bankrupt companies? What good are these cases doing and what kinds of consumers are being protected by the FTC these days? It seems to me that prosecuting bankrupt companies takes more time and extra resources, and results in no payoff for the American consumers or the taxpayer funding the Commission.

Answer: The Commission is currently litigating four cases where some or all of the defendants have filed for bankruptcy. In addition, three matters are still in the investigational stage. Each case the Commission brings requires an analysis of the costs and benefits of Commission action which necessarily includes consideration of the financial status of the proposed defendant. While the fact that one or more proposed defendant has filed for bankruptcy, or files shortly after the Commission brings suit, is a factor we consider in evaluating possible cases, there are several reasons why that factor is not determinative of our action.

First, companies that file for Chapter II reorganization may still be in business. In these instances administrative orders and federal court injunctions can require the immediate cessation of illegal practices and prohibit such practices in the future. In addition, many cases involve both corporate and individual respondents. In most of these cases, only the corporation has filed for bankruptcy. Without Commission action the individual respondents would be free to set up a new company and continue the challenged activity.

Second, in some cases, the Commission can take action that will minimize consumer injury should the practices be resumed. For example, in three cases involving alleged deceptive practices in the sale of health spa memberships the Commission obtained an injunction that requires the defendants to post a performance bond if they resume their business.

Third, even though respondents have filed for bankruptcy, sufficient assets may be available for consumer redress or civil penalties. For example, in one case currently in litigation the Commission staff expects to obtain up to several million dollars in consumer redress from bankrupt defendants. In another case, we have frozen the company's assets, which consist of title to homes obtained from low income consumers by practices we allege to be fraudulent. In such cases the Commission plays an important role by ensuring that assets are returned to injured consumers.

Even in cases where assets are not available, the Commission may be able to fashion alternative methods of consumer redress. In Super Market Media, Inc. a mail order company agreed to ship merchandise that had been paid for but was sitting in a warehouse pending the outcome of a bankruptcy action. Because of FTC action, the company shipped 26,523 packages and consumers received the items they had ordered rather than a small percentage of the cost of those items. Finally, Commission action sends a signal to businesses that they cannot defraud consumers and then evade liability by filing for bankruptcy. In a case involving alleged mortgage foreclosure fraud currently in litigation, the company filed for bankruptcy shortly after the Commission filed its complaint in district court. The Commission staff was successful in preventing the defendant from moving the action to the bankruptcy court. This means that the same district court that is deciding the consumer fraud issues will be deciding the defendants bankruptcy petition.

In conclusion, the current or impending bankruptcy of a proposed respondent is an important consideration in the Commission's analysis of the consumer benefit to be obtained in a case. However, the Commission's record demonstrates that in individual cases by stopping or preventing the resumption of illegal conduct, binding individual as well as corporate respondents, aggressively seeking assets for consumer redress, and fashioning innovative relief the Commission has significantly benefitted consumers.

DEFECTIVE PLAYGROUND EQUIPMENT

Question: Is there a presumption at the FTC that a large company, involved in a legitimate business enterprise, will not violate the FTC Act for fear of losing its reputation? How can the staff overcome that presumption when it is denied the use of compulsory process against companies that "stone-wall"? Do you agree with her [the Director of the Bureau of Consumer Protection] reasoning that the company was unlikely to have sold this defective equipment knowingly, because of the potential liability for injuries to the children playing on it? Should the FTC refuse to investigate cases based on this reasoning?

Answer: There is no presumption at the FTC that a large company will not violate the FTC Act as is demonstrated by the complaints issued in the last two and a half years against such companies as Brown and Williamson, Amana, Rush Hampton, Associated Mills, and Figgie International Inc. In the particular matter at issue the Director of the Bureau of Consumer Protection neither refused to investigate the allegations nor denied the use of compulsory process, if necessary, to aid the investigation. Rather, the Bureau Director, recognizing that enforcing civil investigative demands can be a long, arduous, resource intensive process involving the staff in issues only tangentially related to gathering information, asked the staff to take three discrete actions before she committed significant resources to this investigation. First, the Consumer Product Safety Commission (CPSC) had already conducted an investigation of the alleged wood substitution problem and appeared to have information that would aid our investigation. In an attempt to avoid possible delay in obtaining this same information from the company by means of compulsory process it seemed prudent first to request the CPSC to provide the information. Second, the Bureau Director directed the staff to talk with the wood expert relied upon by the CPSC concerning the alleged substitution. It should be noted that the company had mailed letters to all of its customers who purchased the wooden playground equipment at issue. The letter explained how to test in-ground logs for decay and invited customers to purchase replacement logs if they discovered decay. As discussed in the Bureau Director's memordandum, this letter would not cure the alleged contract breach; however it would alert purchasers to the possibility of hidden decay. Third, the Bureau Director directed the staff to conduct an initial survey of the company's distributors to acquire information concerning consumer complaints. The Bureau Director also made clear that if the necessary information could not be obtained expeditiously from the suggested sources she would consider the need for compulsory process on an expedited basis.

In fact, the staff did obtain significant additional information from these sources, as well as from the company itself. At this time the staff is continuing its investigation and monitoring and coordinating its activties with CPSC to determine what action would be in the public interest. Finally, we should note that the investigation referred to in the question is a nonpublic Commission investigation. The fact that the Commission is conducting an investigation should not be construed to mean that the law has been violated.

REAL ESTATE REPORT

Question: I have read in a Washington Post story that a study on the real estate market has been bottled up in the FTC since January 1981. Why has it taken so long to release?

Answer: The draft of the real estate brokerage study submitted by the Los Angeles Regional Office to the Bureau of Consumer Protection in January, 1981, was a very lengthy document, totalling 483 pages. In addition, five appendices and additional supporting documents raised the volume of material submitted to over 1000 pages. Staff of the three Bureaus identified a number of serious structural and substantive problems in the report. Accordingly, a detailed review of the report was required. The Bureaus formed a task force to review the study. The task force was directed to resolve problems with the report without substituting its views for those of the authors and without altering the overall thrust of the report. The task force completed a revised draft of the study in October, 1983. The Bureaus forwarded the revised study to the Commission recommending that the Commission publish the study as a Los Angeles Regional Office staff report.

TRANSFER OF CAB FUNCTIONS

Question: Your request includes the transfer of $250,000 and 5 workyears from the Civil Aeronautics Board for the administration of airline consumer protection provisions. Yet, on March 13, 1984 Commissioner Douglas told the House Aviation Subcommittee that "absent further legislation, the FTC would be precluded from exercising any unfairness or deception authority over air carriers." If the Congress does not enact legislation eliminating the exemption in Section 5 of the FTC Act, would you still need these resources? If so, what would they be used for?

Answer: The $250,000 and 5 workyears are included in our budget exclusively for the CAB transfer. If the transfer of authority does not occur in fiscal 1985 we will not require these additional resources.

Question: What are your views on the transfer of airline consumer protection provisions now administered by the CAB to the Department of Transportation, as provided by H.R. 5297, the Civil Aeronautics Board Sunset Act of 1983?

Answer: The FTC favors transferring the CAB's consumer protection jurisdiction to the FTC rather than to the Department of Transportation. The FTC has expertise in regulating unfair or deceptive acts or practices for a wide variety of industries and there is nothing sufficiently unique about the airline industry that would limit the Commission's ability to handle consumer protection matters concerning that industry.

Indeed, the CAB's consumer protection authority under Section 411 of the Federal Aviation Act is based on Section 5 of the FTC Act and the CAB's enforcement standards have been similar to those existing under Section 5 of the FTC Act. The experience of the Board and the courts has confirmed that the FTC's general principles of consumer unfairness and deception are also appropriate for the airline industry.

The FTC is also a logical repository for institutional reasons. The FTC has a variety of enforcement mechanisms in place. Its professional staff is well versed in obtaining such relief as injunctions, cease and desist orders, and civil penalties.

The FTC can also issue trade rules where relief in individual cases is not a sufficient remedy. Remedies for violations of its trade rules include rescission or reformation of contracts, refunds and return of property, as well as payment of damages and civil penalties. Thus, the FTC has a variety of practical relief available to protect the consumer.

In sum, the FTC is a logical respository of the consumer protection function. This new mission could be carried out with only incremental additions to its staff, and would not require the establishment of new offices. Placement of consumer protection jurisdiction with the Commission would be consistent with the philosophy behind the Airline Deregulation Act -- that the airline industry does not need special protection and should be treated no differently from any other industry.

AIRLINE RATE STRUCTURES

Question: In your request for Economic Policy Analysis, you have raised the possibility of studying airline rate structures in the North Atlantic. Without legislation removing the exemption in Section 5 of the FTC Act, will the FTC still undertake a study of airline ratemaking?

Even if such authority existed, your proposal focuses on international airline rates. Why would you study an area of air transportation that continues to operate under regulation?

Answer: The FTC has no current plans to study airline rate structures in the North Atlantic. The Commission does, however, have a continuing interest in rates charged by firms operating under regulation in the international airline industry and in other industries, due to the Commission's general mandate to promote competition and consumer interests. Regulation can raise barriers to entry of new firms and give existing firms monopoly power over the rates charged consumers. Regulation can also prevent firms from operating in the most efficient way, thereby raising costs. In either case, regulation will raise the rates charged consumers. The Commission's staff conducts studies of regulated industries to identify instances in which regulation is imposing such burdens on consumers and to determine whether consumers would be better off under a free market or an alternative form of regulation. An example of such a study is the FTC staff report on FAA regulation of airport landing rights, which found that consumers would be better off if the FAA permitted airlines to buy and sell those rights.

Even without legislation removing the exemption in Section 5, the Commission has authority to conduct studies of air carriers since Section 6 of the FTC Act, the basic source of the Commission's investigatory power, does not exempt air carriers from its scope.

ADMINISTRATIVE LAW JUDGES REDUCTION

Question: There is a reduction of one workyear budgeted for the Administrative Law Judges. However, the justification (p. 62) says that the "activities conducted by the office will be the same as in fiscal 1984, but also assumes that the workload will decrease." Which is it, "the same" or a "decrease" in work in 1985, and if it is the same, why are you reducing the staff?

Answer: The activities conducted by the ALJ's will remain the same, i.e., they are the officials to whom the Commission delegates the initial performance of its adjudication and fact-finding functions in conformity with applicable statutes, judicial precedent, Commission decisions and the agency's rules of practice. These functions will not change. However, the workload is expected to decrease somewhat in 1985 justifying a one position drop. In addition, the nature of their cases are shifting from large, volumnious cases addressing novel enforcement positions to cases involving well established precedents.

REAUTHORIZATION

Question: At the beginning of your justifications, you indicate that the revised 1984 budget observes the language of the 1984 Appropriations Act continuing restrictions in the FTC Improvements Act of 1980. That is really accentuating the positive since the Commission had no other choice.

On page A-3, it is proposed to delete those provisions from the 1985 appropriation. The Federal Trade Commission Authorization, FY 1984-86 (S. 1714) was reported August 2, 1983 and Senate consideration still has not been scheduled. Don't you think we should be aiming towards retaining those provisions in the Appropriation Act in view of the uncertainty of enacting S. 1714?

Answer: The FTC hopes that its reauthorization will be enacted at the earliest possible time. The Commission now favors retaining those provisions pending enactment of the reauthorization.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF THE U.S. TRADE REPRESENTATIVE

STATEMENT OF AMBASSADOR PETER O. MURPHY, DEPUTY U.S. TRADE REPRESENTATIVE

ACCOMPANIED BY:

- **JOHN P. GIACOMINI, DIRECTOR, OFFICE OF MANAGEMENT**
- **DOUGLAS NEWKIRK, ASSISTANT U.S. TRADE REPRESENTATIVE FOR GATT AFFAIRS**
- **WILLIAM MARONI, ASSISTANT U.S. TRADE REPRESENTATIVE FOR CONGRESSIONAL AFFAIRS**

INTRODUCTION OF WITNESSES

Senator RUDMAN. Our last request this morning is from the U.S. Trade Representative.

Unfortunately, Ambassador William Brock is unable to be with us this morning, as he is involved in sensitive trade negotiations with the Japanese Government. In his absence, we will be hearing from Deputy U.S. Trade Representative Peter O. Murphy.

Ambassador Murphy, you may read or summarize your statement, as you prefer. It will, of course, be included in the record in its entirety.

Ambassador MURPHY. Thank you very much. I would like to echo the fact that Ambassador Brock is not here. I know he would very much have liked to be here.

Senator RUDMAN. I think he has his priority set.

Ambassador MURPHY. Let me begin by saying I have a brief statement and if you have any questions now I will be happy to answer them and any further questions you would like to submit. We will try to be as responsive as we can.

I would like to describe briefly our resource needs and submit a more detailed statement for the record. Then I will address any specific questions that members of the subcommittee may have.

BUDGET REQUEST

Our current fiscal year appropriation of $11.371,000 does not include two supplemental requests. One is a pay supplemental, or $128,000, to cover the recent, legislated pay raise; the other is for $511,000 to provide funds essential for initiation of the harmonized code system, or HCS. This represents a total proposed budget of $12,010,000 for this fiscal year.

The goal of the HCS is a new international tariff nomenclature which will facilitate international trade transactions. Widespread adoption will reduce the cost of reporting for U.S. producers, promote uniformity and certainty in customs classification, and increase the accuracy of trade statistical reporting systems. This is an enormous, complex undertaking which involves interagency as well as international coordination.

FOUR PHASES OF WORKLOAD

We have divided the work into four phases: (1) line-by-line review of the ITC's proposed conversion of U.S. tariff schedules, (2) data preparation to support negotiations and review of foreign country conversions, (3) negotiations in Geneva and largely throuqh the GATT, and (4) congressional approval followed by implementation. We have been dealing with this issue since 1970. The 1974 Trade Act required our full participation since the HCS will be treated as an international trade agreement. We expect to begin negotiations formally, in Geneva in 1985, and have scheduled an implementation date of January 1987.

For fiscal year 1985, our total request is $14,179,000, or an increase of $2,680,000. Of that amount, $1,534,000 is for the HCS—for expenses at the peak of scheduled activities. This will allow us to provide for essential costs such as transfer of personnel to Geneva, rental of office space and equipment, reproduction, and the costs of computer programming to provide a strong information base for the negotiations. The remainder is designed to maintain an operating level similar to this fiscal year and to accommodate general price level adjustments plus uncontrollable increases for expenses such as rent and printing. Our fiscal year 1985 request also includes an additional full time equivalency, or FTE, for a position to cover the development of computer programs for the HCS. For this fiscal year, you provided us with funds earmarked for word processing equipment and for follow-on projects in career development. Regarding the former, we are in the final evaluation stages of vendors' proposals. In career development, we are looking at the formulation of in-depth assessments of the job-related needs of a selected group of midlevel professionals so that we may enhance their background and knowledge for trade negotiations.

Mr. Chairman, we believe that our request is a very reasonable one and reflects budget constraints.

I would be pleased to respond to your questions.

[The statement follows:]

PREPARED STATEMENT OF PETER O. MURPHY
DEPUTY UNITED STATES TRADE REPRESENTATIVE

MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE YOU TO PRESENT OUR RESOURCE NEEDS FOR FISCAL YEAR 1985 AND TO RESPOND TO YOUR QUESTIONS. WITH ME IS OUR ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR GATT AFFAIRS, DOUGLAS NEWKIRK, THE DIRECTOR OF OUR OFFICE OF MANAGEMENT, JOHN GIACOMINI, AND OUR ASSISTANT U.S. TRADE REPRESENTATIVE FOR CONGRESSIONAL AFFAIRS, BILL MARONI.

SINCE LAST YEAR, WE HAVE HAD SEVERAL ORGANIZATIONAL CHANGES WHICH I BELIEVE MOST OF YOU ARE AWARE OF - WE NOW HAVE TWO DEPUTIES IN WASHINGTON, AMBASSADOR MICHAEL B. SMITH WHO IS RESPONSIBLE FOR BILATERAL AND MULTILATERAL ACTIVITIES AND AMBASSADOR ROBERT E. LIGHTHIZER WHO IS RESPONSIBLE FOR SECTORAL ACTIVITIES. I SERVE AS DEPUTY FOR OUR GENEVA OFFICE WHILE RICHARD IMUS IS OUR CHIEF TEXTILE NEGOTIATOR.

THE PRESIDENT'S BUDGET AND THE RESOURCE REQUEST WHICH WE SUBMITTED TO YOU CONTAIN SEVERAL ITEMS WHICH I WOULD LIKE TO EXPLAIN BRIEFLY.

OUR FISCAL YEAR 1984 APPROPRIATION OF $11,371,000 DOES NOT INCLUDE TWO SUPPLEMENTAL REQUESTS. ONE IS FOR A PAY SUPPLEMENTAL OF $128,000 TO COVER BOTH THE RECENT RAISE LEGISLATED BY CONGRESS

AND MEDICARE COST AND IS INCLUDED IN THE FY 84 COLUMN OF THE PRESIDENT'S BUDGET FOR FY 85. THE OTHER SUPPLEMENTAL REQUEST OF $511,000 WOULD PROVIDE FUNDS ESSENTIAL FOR THE INITIAL STAGES OF PREPARING FOR U.S. ADOPTION OF THE HARMONIZED CODE SYSTEM OR HCS AND IS NOT SHOWN IN THE FY 84 COLUMN. PLANS FOR THE HCS WERE FIRMED UP AFTER THE ADMINISTRATION RECEIVED ITC'S PROPOSED NEW TARIFF SCHEDULE IN JUNE 1983. THIS REPRESENTS A TOTAL PROPOSED BUDGET FOR FY 1984 OF $12,010,000.

I BELIEVE MOST OF YOU ARE ACQUAINTED WITH THE GOALS OF THE HCS - A NEW INTERNATIONAL TARIFF NOMENCLATURE WHICH WILL FACILITATE INTERNATIONAL TRADE TRANSACTIONS. WIDESPREAD ADOPTION OF THE HCS WILL REDUCE THE COST OF REPORTING FOR U.S. PRODUCERS, PROMOTE UNIFORMITY AND CERTAINTY IN CUSTOMS CLASSIFICATION, AND INCREASE THE ACCURACY OF TRADE STATISTICAL REPORTING SYSTEMS.

IT IS AN ENORMOUS, COMPLEX UNDERTAKING, AND INVOLVES INTERAGENCY COORDINATION AS WELL AS INTENSIVE NEGOTIATIONS AND PLANNING WITH OTHER NATIONS. THE FOUR PHASES OF THE ADMINISTRATION'S WORK PROGRAM ARE: LINE-BY-LINE REVIEW OF THE ITC'S PROPOSED CONVERSION OF U.S. TARIFF SCHEDULES, DATA PREPARATION TO SUPPORT NEGOTIATIONS AND REVIEW OF FOREIGN COUNTRY CONVERSIONS, NEGOTIATIONS IN GENEVA AND LARGELY THROUGH THE GATT, AND CONGRESSIONAL APPROVAL FOLLOWED BY IMPLEMENTATION.

WE HAVE BEEN DEALING WITH THIS ISSUE SINCE 1970. THE 1974 TRADE ACT REQUIRED OUR FULL PARTICIPATION IN THE DEVELOPMENT OF THE NOMENCLATURE SINCE THE HCS WILL BE TREATED AS AN INTERNATIONAL TRADE AGREEMENT. THE USTR WILL LEAD THE NEGOTIATIONS, WHICH WE EXPECT TO FORMALLY BEGIN IN GENEVA IN 1985, AND HANDLE THE DETAILS INVOLVED IN ARRIVING AT AN AGREEMENT UNDER THE AUSPICES OF THE GATT.

OUR TIMETABLE CALLS FOR COMPLETION OF THE U.S. CONVERSION AND REVIEW OF FOREIGN CONVERSIONS BY THE END OF THIS YEAR. WE HOPE TO COMPLETE THE GENEVA NEGOTIATIONS DURING 1985 SO THAT WE CAN USE ALL OF 1986 TO PREPARE OURSELVES FOR AN IMPLEMENTATION DATE OF JANUARY 1, 1987.

TO DATE, WE ARE MEETING OUR SCHEDULE. WE HAVE HELD PUBLIC HEARINGS ON THE TARIFF CONVERSION PROCESS IN SEVERAL CITIES AND HAVE ESTABLISHED DATA BASE CONTACTS IN THE GATT SO THAT THE REVIEW OF FOREIGN COUNTRY CONVERSIONS WILL BE COORDINATED WITH THE OVERALL EFFORT OF OUR LINE-BY-LINE REVIEW, MENTIONED ABOVE, WHICH BEGAN IN JANUARY. OTHER AGENCIES WHICH ARE COOPERATING IN THE HCS PROJECT ARE THE INTERNATIONAL TRADE COMMISSION, THE DEPARTMENT OF STATE, COMMERCE INCLUDING THE BUREAU OF THE CENSUS, AGRICULTURE, TREASURY INCLUDING THE U.S. CUSTOMS SERVICE, AND LABOR. ALL ARE COMMITTING RESOURCES

TO THE PROGRAM. CURRENTLY WE HAVE INDIVIDUALS ON DETAIL TO USTR. WE WOULD BE PLEASED TO PROVIDE YOU WITH OUR HCS TIMETABLE.

FOR FISCAL YEAR 1985, THE ACTUAL INCREASE OVER THE 1984 BASE IS $2,680,000. OF THE TOTAL REQUEST, $1,534,000 IS FOR THE HARMONIZED CODE, FOR EXPENSES AT THE PEAK OF SCHEDULED ACTIVITIES. SEVERAL SIGNIFICANT ITEMS WILL BE THE TRANSFER OF PERSONNEL TO GENEVA, RENTAL OF OFFICE SPACE AND EQUIPMENT, PRINTING AND REPRODUCTION OF HCS MATERIALS, AND COMPUTER EQUIPMENT AND PROGRAMMING TASKS TO PROVIDE A STRONG INFORMATION BASE FOR INTERNATIONAL NEGOTIATIONS. THE REMAINDER OF THE REQUEST IS DESIGNED TO MAINTAIN AN OPERATING LEVEL SIMILAR TO FISCAL YEAR 1984, AND TO ACCOMMODATE GENERAL PRICE LEVEL ADJUSTMENTS PLUS UNCONTROLLABLE INCREASES FOR ESSENTIAL EXPENSES SUCH AS COMMUNICATIONS, RENT, AND PRINTING.

BEGINNING IN FISCAL YEAR 1983, WE WERE ALLOWED TO OPERATE UNDER ONE CEILING OF 133 PERMANENT POSITIONS FOR A FULL TIME EQUIVALENT EMPLOYMENT OR "FTE" OF 133 WORKYEARS. THIS GAVE US THE FLEXIBILITY TO USE OUR "FTE" IN A MANNER WHICH BEST SUITED OUR NEEDS AND TO CREATE GREATER STABILITY AMONG ESSENTIAL STAFF BY CONVERTING SELECTED POSITIONS TO PERMANENT STATUS. FOR FISCAL YEAR 1984, WE HAVE 137 FTEs, AND FOR FISCAL YEAR 1985 WE ARE REQUESTING ONE ADDITIONAL "FTE" FOR A TOTAL OF 138. THIS WILL

PROVIDE FOR A POSITION TO COVER THE DEVELOPMENT OF THE HCS COMPUTER PROGRAM.

I WOULD LIKE TO UPDATE YOU ON FUNDS WHICH YOU PROVIDED US FOR FISCAL YEAR 1984, EARMARKED FOR WORD PROCESSING EQUIPMENT AND FOR FOLLOWUP PROJECTS ON A SPECIAL STUDY WE DID IN 1982 TO PROVIDE GUIDANCE ON HOW WE CAN DEVELOP THE BEST U.S. TRADE NEGOTIATORS. FOR THE WORD PROCESSING EQUIPMENT, WE ARE IN THE FINAL EVALUATION STAGES OF VENDORS' PROPOSALS. THE FUNDING WILL BE USED FOR MICROCOMPUTERS AND RELATED TRAINING AND MAINTENANCE, AND FOR EQUIPMENT NEEDED TO NETWORK INTO EXISTING COMPUTER FACILITIES. THE FUNDS PROVIDED FOR CAREER DEVELOPMENT WILL BE UTILIZED TO FORMULATE IN-DEPTH ASSESSMENTS OF THE JOB-RELATED NEEDS OF A SELECTED GROUP OF MIDLEVEL PROFESSIONALS AND TO IDENTIFY APPROPRIATE COURSES AND SEMINARS TO ENHANCE THEIR BACKGROUND AND KNOWLEDGE FOR TRADE NEGOTIATIONS.

TO SUPPLEMENT OUR PERMANENT STAFF AND TO HOLD DOWN PERSONNEL COSTS, WE ARE CONTINUING OUR SUCCESSFUL, VOLUNTEER UNIVERSITY INTERN PROGRAM. LAST FISCAL YEAR WE HAD MORE THAN 280 APPLICANTS; WE ACCEPTED 45 FROM SEVENTEEN DIFFERENT UNIVERSITIES. WE CONDUCT THIS PROGRAM ON AN INFORMAL BASIS TO HOLD DOWN COSTS, AND THE NEED FOR ADDITIONAL STAFF TO RUN A FORMAL PROGRAM. THIS EFFORT SAVED US SALARIES AND RELATED COSTS OF MORE THAN $120,000. OTHER SAVINGS

WERE EFFECTED BY ACQUIRING DETAILS ON A NONREIMBURSABLE BASIS, BY PARTICIPATING IN AN INTERAGENCY "PROGRAM POOL" FOR SPECIALIZED COMPUTER PROGRAM NEEDS, AND BY CLOSELY MONITORING TRAVEL.

WE ARE USING EVERY MEANS POSSIBLE TO INCREASE PRODUCTIVITY AND MANAGERIAL EFFECTIVENESS WITH THE RESOURCES WE HAVE BEEN GIVEN. WE ARE CONTINUING TO EXERCISE TIGHT CONTROL OVER EXPENDITURES ESPECIALLY FOR OVERTIME, TRAVEL, AND PROCUREMENT, WITH OUR SENIOR STAFF PLAYING A DIRECT ROLE IN THIS DAILY PROCESS. WE HAVE ALSO COMPLIED FULLY WITH THE REQUIREMENTS OF THE FEDERAL MANAGER'S FINANCIAL INTEGRITY ACT OF 1982 BY SUBMITTING POSITIVE REPORTS BOTH TO THE PRESIDENT AND TO THE CONGRESS ON INTERNAL ACCOUNTING AND ADMINISTRATIVE CONTROLS.

MR. CHAIRMAN, WE BELIEVE THAT OUR REQUEST IS A VERY REASONABLE ONE AND REFLECTS BUDGET CONSTRAINTS EVEN WITH CONTINUALLY RISING WORKLOADS. ANY REDUCTION OF OUR RESOURCE REQUEST WILL SERIOUSLY AFFECT OUR CAPABILITY TO DO THE JOB ASSIGNED TO US. WITH THE REQUESTED RESOURCES WE WILL BE ABLE TO IMPLEMENT OUR SCHEDULE FOR THE HARMONIZED CODE SYSTEM AND TO PURSUE THE COMMITMENT OF THE ADMINISTRATION AND THE CONGRESS TO ECONOMIC GROWTH AND A STRONG ECONOMY.

I WOULD BE PLEASED TO RESPOND TO YOUR QUESTIONS.

THANK YOU.

Office of the U.S. Trade Representative
Summary and Description of Requirements by Object Class
(Dollar amount in thousands)

Appropriation: Salaries and Expenses

Object Class		1984 Appropriations		1985 Estimate		Inc.(+) or Dec.(-)	
		Pos.	Amount	Pos.	Amount	Pos.	Amount
11.1	Full-time permanent positions..........	121	$4,984	122	$5,531	+1	+547
11.3	Positions other than full-time permanent........ (1040s, intermittents, part-time, consultants, driver-messengers for Geneva)		600		303		-297
11.5	Other personnel compensation. (overtime, differentials, SES bonuses, merit increases)		167		233		+66
11.8	Special personal services payments.................. (reimbursable details)		921		988		+67
	Total personnel compens.	121	$6,672	122	$7,055	+1	+383
12.1	Personnel benefits......... (health, retirement, insurance, allowances)		718		1,018		+300
21	Travel and transportation of persons................. (travel, per diem, miscellaneous expenses)		876		1,156		+280
22	Transportation of things...... (transport of household and personal effects to Geneva; U.S. storage of goods)		36		147		+111

Object Class (Continued)		1984 Appropriation	1985 Estimate	Inc.(+) or Dec.(-)
23.1	Standard level user charges... (rent for office space in Washington)	706	1,152	+446
23.2	Communications, utilities and other rent.............. (office and residence rents - Geneva, utilities, Xerox, telephone, postage, teletype, computer time)	835	1,160	+325
24	Printing and reproduction..... (federal register, stationery, forms, reports)	156	336	+180
25.1	Other services............... (administrative support - Geneva, personnel and vendor contracts and office machine maintenance, transcribing and translation services, career development, clearances)	1,066	1,550	+484
25.2	Representation...............	60	68	+8
26	Supplies and materials...... (office supplies, computer expendables, supplies)	160	149	-11
31	Equipment................... (office equipment D.C. and Geneva, computer hardware and software)	214	388	+174
	Total requirements.........	$11,499*	$14,179	+2,680

*includes pay supplemental of $128K

FOOTWEAR

Senator RUDMAN. Thank you very much. Let me ask you a few questions about trade issues. As you can well imagine, my State of New Hampshire is very concerned about the footwear industry. Tell us the status of the 301 cases you have accepted against Japan, Brazil, Taiwan, and Korea. How aggressively is your Office moving against these barriers to the U.S. footwear exports? I understand that the export tax used by the Brazilians to offset Government subsidies has gone uncollected. Brazil has now displaced Italy as the No. 3 supplier of imported footwear—and companies from New Hampshire are unable to sell anything in that particular country.

Ambassador MURPHY. We are aware that the footwear issue is critical. That has a very long history. Some firms are doing better than others. We are watching it very carefully and working toward a solution. We are trying to use the GATT procedures and work through that particular forum.

I would like to submit a more detailed response for the record.

[The information follows:]

RESPONSE TO RUDMAN QUESTIONS

With regard to the Section 301 footwear case against Brazil, the high tariff, import surcharge and suspension of the issuance import licenses for footwear are all measures which have been imposed as balance-of-payments measures. Furthermore, Brazil has notified the GATT of the imposition of these measures in accordance with Article XVIII of the GATT which allows developing countries to impose balance-of-payments measures under certain circumstances. In light of the fact that these import charges and restrictions have been imposed as balance-of-payments measures it would be futile for us to pursue the case under the GATT dispute settlement procedures.

However, while we do not have to pursue dispute settlement in this case, we are pursuing liberalization of restrictions on footwear imports through bilateral discussions. We have transmitted to the Brazilian governments a list of the types of footwear U.S. manufacturers would be interested in exporting to the Brazilian market and have asked that the government ease restrictions on these categories of footwear on an MFN basis.

Ambassador Brock rejected the trade diversion claims included in the first 301 footwear petition without prejudice on the grounds that he did not believe that there was sufficient information to establish a causal link between the restrictive practices described in the petition and the diversion allegations.

Upon examining the second footwear petition containing only the trade diversion claims, Ambassador Brock continued to be of the view that there simply was not sufficient information to establish the diversion claims. Thus, unless there is extensive new information available on the trade diversion issue I would not advise the Petitioner's to pursue it under Section 301. Moreover, the industry is currently pursuing the most appropriate remedy with respect to rising imports in requesting relief under Section 201 of the Trade Act of 1974.

Senator RUDMAN. I find it onerous that we cannot sell that product in that country. It seems to me that there ought to be a short way to resolve that. They obviously have a large share here. It seems to me that we ought to move vigorously. Are we moving vigorously against them?

Ambassador MURPHY. Brazil, as you know, has been a major problem for us in the last few years. Our exports to them have decreased dramatically as a result of their debt problems. They have worked out a debt arrangement with the IMF. To get themselves out of debt problems, they have had to increase their net exports. Personally, I think if you take a review of Brazil in terms of its overall situation, they have high tariffs, they have restrictive licensing and in the long term that is clearly intolerable. But, in the short term, they have got severe debt problems.

I must also state that in overall terms, the value of the dollar right now as in the last few years has gone up about 40 percent. That has a very marked impact on what we can sell and what we can't sell.

Senator RUDMAN. Would you advise them to pursue the trade diversion issue, since you did not accept that portion of the 301 case last year?

Ambassador MURPHY. I wouldn't know what advice to give them from the standpoint that I would have to look at it in greater detail.

Senator RUDMAN. Would you answer that for the record?

Ambassador MURPHY. Yes, sir.

[The answers relating to the trade diversion issue begin on page 119:]

IMPORT PENETRATION OF SHOE INDUSTRY

Senator RUDMAN. The import penetration in the shoe industry, 70 percent, is more than three times that of other import sensitive industries—steel 25 percent, autos 28 percent. The No. 1 manufacturing employer in New Hampshire is the footwear industry. I understand all the problems Brazil is having, but when you talk about debt problems, I could bring in a few thousand shoe workers who have serious debt problems of their own. Quite frankly, in terms of all of those broad Government policies that we are asked to support, I think it is important that our Government make it very clear that a price increase is going to be a tough price; countries like Brazil are going to find out that they just can't do this. There is little going on in terms of retribution. If they make no effort to be cooperative, and if they don't respond, put all the pressure on them. There are some things we can do. I think it ought to be made clear that people in Congress are getting impatient. We understand their problems but they have to understand some of ours. I hope that message gets across.

Ambassador MURPHY. I will take that back and I have great sympathy for it.

TRADE REORGANIZATION

Senator RUDMAN. The Trade Act of 1979 assigned overall responsibility for formulation of U.S. trade policy to the U.S. Trade Representative. Now, 4 years later, the administration proposes broad changes in the structure of Federal trade functions, including the consolidation of negotiating activities in a Department of International Trade and Industry.

Is it Ambassador Brock's opinion that this is a wise idea?

Ambassador MURPHY. I think certainly that Ambassador Brock supports the notion. I have been in the U.S. Trade Representative's office for 10 years and would like to give my own personal comments. I think the benefits of the current structure are largely derived from the fact that it is in the Executive Office of the President. That, in negotiations, will certainly help. I can't imagine even with reorganization, which would be in essence taking the trade function out of the White House and creating a new Department of Trade, that other particular departments would no longer have an interest in trade. The Treasury Department, for example, the State Department, for example, and Agriculture. So, in essence one of the basic reasons why the USTR was set up was to serve as a coordinating function and I can't imagine that it would be too long after this reorganization that there wouldn't be a need for some kind of coordinating function.

But, I think that certainly we support the bill and we will have to see what happens.

STEEL

Senator RUDMAN. We have seen a significant increase in the amount of foreign steel sold in this country. In fact, the chairman of U.S. Steel Corp., David Roderick, has called for a limitation on steel imports to 15 percent of the American market.

I would like you to comment on that request. If you don't think that is a wise policy, how are we going to deal with the low-priced steel imports which are subsidized? I think a number of people have been on record against it, particularly Secretary Baldrige.

Ambassador MURPHY. I would like to make clear there is a distinction between that and subsidized steel from low-cost or other export duties to the United States. We have statutes in the United States fully consistent with our international obligation and as far as our office is concerned, there is no reason for us to accept subsidized steel. There are procedures and processes to go through that. We have every right to countervail against them and I think it is proper and correct, and I think we are starting to see more of that.

SERVICES

Senator RUDMAN. Let's talk about the service industry. As you know, last year we urged the U.S. Trade Representative to reduce barriers to American service exports, particularly in the balance of trade in these areas. What efforts are you undertaking in this area to aid the service exports?

Ambassador MURPHY. As you know, America has had a long-term interest to develop some kind of understanding in services. We have over the last year, following up on the GATT Ministerial, been meeting and trying to do everything we can to bring services into a normal discussion on the GATT procedures.

Last year a number of developing countries were against it because they look at it from the standpoint this is just another developed country idea to get access to developing countries. But many of the problems that we were confronted with last year were overcome, and I will say the discussions are proceeding forward and, over the long run, will be concluded satisfactorily from our standpoint.

Senator RUDMAN. Following up, last year we expressed support for your efforts to gain access for American firms to the Japanese telecommunications and information market similar to the access which Japanese companies enjoy in this country. What progress are you making in that area?

Ambassador MURPHY. I am glad you asked that question because we have our telecommunications expert right here.

Mr. GIACOMINI. Our 3-year agreement with the AT&T expired and we extended it temporarily. We are consulting with the firms that have direct connection with AT&T during the course of the original agreement. They gave us a list of improvements they wanted to see to the agreement and we told the Japanese we couldn't renew the agreement unless they adopted all the improvements we requested from our business community. After the agreement expired the Japanese acquiesced and we have a new agreement. Over the course of 3 years we went from zero sales originally to about $14 million the first year, to $48 million the second year, and in the third year we reached sales of $140 million. It is not as much as we would like to see but it is going up.

SUBMITTED QUESTIONS

Senator RUDMAN. We have a number of questions for the record, some of them detailed. We will keep the record open until May 1.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATORS LAXALT AND HOLLINGS

In 1980, candidate Reagan asked the American people to consider if they were better off than they had been 4 years earlier. Let's look at our trade situation in those terms. Our trade deficit in 1980 was $25.5 billion. At the end of 1983, the trade deficit had more than doubled to $60.6 billion, and is projected to surpass $100 billion by the end of 1984.

Mr. Ambassador, do you agree that when it comes to trade, we are certainly not better off than we were 4 years ago?

I would certainly prefer to see the United States with a smaller or even no trade deficit so that U.S. exporting firms and workers, and those competing with imports could participate more fully in the current recovery and expansion. However, the U.S. trade deficit has not grown in isolation from other economic developments in the U.S. and world economy. Any meaningful answer to the question of whether we as a nation are better off with the increased trade deficit must reflect this broader economic context in which our trade deficit has evolved during the last four years.

There are three principal elements contributing to our increased trade deficit. First, the earlier and stronger recovery of our economy than those abroad has resulted in U.S. imports expanding more rapidly than foreign demand for U.S. exports. This factor is a fairly normal occurrence for the economic leader in a world recovery; it is a temporary source of deterioration of our trade balance which will be corrected as recovery strengthens in the rest of the world.

Second, the severe debt problems in a number of LDCs, particularly in Latin America where U.S. trading interests are strong, have led these countries to cut back their imports 20 to 40 percent. Our exports have suffered accordingly. There is no easy or quick solution to this problem. They have made progress over the last three years, but it will be a while longer before these countries complete their painful balance-of-payments adjustment process and are able to expand their imports and domestic economies again. We have had to make the best of a very difficult situation whose origins go back to excessive credit expansion and the world wide inflation of the late 1970s. Support by the International Monetary Fund, other international agencies and the U.S. Government on the one hand and our maintenance of open markets for LDC exports on the other have constituted a policy which I feel will bear fruit both in a future expansion of the high debt LDC economies and of our important export markets there.

The third major cause of our deficit is the high value of the U.S. dollar. In a technical sense, the dollar's high value is being supported by net capital inflows from abroad to the United States. Foreign investors must buy dollars to invest here which drives the dollar up to a level disadvantageous for U.S. exporters and import-competing industries. More fundamentally, the attractive investment opportunities in our expanding economy, the safe haven characteristics of the United States and U.S. real interest rates at a level above those of our major trading partners all tend to attract foreign capital.

Net capital inflows have not only kept the dollar high, they have also helped finance our economic recovery. What our country is currently saving is not enough to finance both large Federal budget deficits and the private credit needs of an expanding economy. The gap is currently being filled in a financial sense by capital inflows from abroad which have their real equivalent in America importing more goods and services than she exports. The large trade deficit is thus in part the reflection of our strong economic recovery in presence of a saving rate which is too low and a Federal deficit which is too high. Considering this full picture of economic change over the last four years, of which trade is an integral part, I feel we are better off. This can be seen from a whole range of factors, from reduced inflation to increased real incomes and record employment levels. What remains to be done is to bring our foreign trade performance into better balance with the rest of the recovery. The most important step I believe we can take to achieve that goal is to start replacing credit borrowed from abroad with increased domestic saving which means adopting measures to increase the U.S. saving rate and to reduce Federal deficits and spending.

QUESTION: Mr. Ambassador, we are appalled to learn that textile and apparel imports for the first two months of this year are running at record rates. This comes after a 25 percent increase in imports last year. In January and February, 1984, imports totaled one billion six hundred eighty-two million yards. If this rate continues, imports for the year will exceed 10 billion yards, nearly 3 billion higher than last year. What steps are you taking to stem this flow?

ANSWER: As part of the economic recovery engineered by the Reagan Administration, market demand in the textile/apparel sector has increased markedly. This has, of course, spurred imports as well as domestic production. Most economic indicators for the textile industry were up sharply in 1983 and early 1984. It is clear, however, that even in a period of recovery, rapidly rising imports can pose a real problem of market disruption. We have, therefore, closely monitored import trade, and where market disruption occurred or was threatened, we took action, consistent with our international agreements, to limit growth. Indeed, in 1983 we established quotas on 109 new categories -- the highest figure in one year in the history of our textile import control program.

QUESTION: Mr. Ambassador, President Reagan and various members of his Administration have repeatedly promised that they would relate textile and apparel imports to the growth of the domestic textile and apparel industry. This domestic industry has been growing at a rate something less than 1 percent a year. Yet, since the Reagan Administration has taken office, imports have increased from 4.9 billion yards in 1980 to 7.4 billion yards in 1983. This is an increase of 52 percent during this Administration. Does the Administration plan to do anything except talk about holding import growth to the growth in the domestic industry?

ANSWER: As noted above, both imports and domestic production grew in 1983, a recovery year, above long-term historical rates. Reflecting the particularly higher rate of import growth, the Administration took a number of vigorous actions, including negotiating a marked increased number of quotas, mentioned earlier. A number of efforts, growing out of a White House Working Group, were also instituted to improve implementation and administration of the existing import control program.

REDUCTION IN DUTIES

Mr. Ambassador, I understand you have currently been advocating two actions that would lower duties, including those on textiles and apparel. These are (1) a speed-up in the duty reductions agreed to in the Tokyo Round and (2) on-going authority for the Administration to negotiate further duty cuts with our trading partners. Don't you believe that either of these two activities would only increase import problems faced by our textile and apparel industry?

The two initiatives which you mention, 1) the acceleration of the Tokyo Round tariff reductions and 2) a grant of limited tariff negotiating authority for the President, have the full support of the Administration as important steps towards the goal of encouraging the reduction of trading barriers world-wide and achieving the trade expansion which is a major component of international economic recovery.

The acceleration of the Tokyo Round tariff reductions, embodied in the "Reciprocal Tariff Reduction Acceleration Act of 1984," S.2680, H.R. 5228, would more quickly bring about the trade benefits which were secured during the multilateral trade negotiations concluded in 1979. As part of those agreements the major participating nations adopted a schedule of annual tariff reductions on enumerated items, for most items to be completed in 1987.

As part of the United States' history as a champion of free trade, and in concert with the commitments made by the U.S. and other major industrialized nations at Williamsburg last summer, th Administration is of the opinion that an excellent opportunity for effecting a breakthrough in trade liberalization is contained in this proposal.

The bill provides that if the President determines that appropriate concessions of benefit to the United States have been made, he may proclaim, for one year at a time, the acceleration of the already scheduled tariff reductions which are in place as part of the Tokyo Round Agreements. The intention is not that the United States act unilaterally but that this trade liberalization advance in relation to similar liberalization undertaken by our major trading partners. At this time Japan has already begun the process of accelerating its tariff reductions and the European Community and Canada have taken steps to accomplish the same. When the President sees these concessions have been made, if this legislation is passed the United States will join its trading partners in this effort.

As with the acceleration of the Tokyo Round scheduled tariff reductions, the Administration views a grant of limited tariff negotiating authority as a means by which the United States can continue to advance trade liberalization and the expansion of markets for U.S. goods abroad.

This authority, if it were granted, would be used for selected trade liberalizing initiatives, such as the proposed Free Trade Area with Israel and the Sectoral Free Trade Arrangements with Canada. In any case, all negotiations undertaken under this authority would be done only after the President receives the full range of advice from the International Trade Commision and the private sector as is provided for by the Trade Act of 1974. Most important, it is intended that any trade agreement entered into by the President under this authority would require final Congressional approval.

The Administration believes that both of these proposals would result in an expansion of trading opportunities for U.S.

industry. The expansion of trade will likewise result in greater revenues and prosperity for all sectors of the U.S. economy, including the textile and apparel industry. Both proposals will assist in promoting the economic recovery now underway.

Question: USTR has a supplemental request as well as a 1985 enhancement associated with adoption of the harmonized code tariff system. A number of agencies under the Subcommittee's jurisdiction are involved in this effort, including the Commerce Department, the International Trade Commission, and the State Department. Is there any single point of coordination for this effort so that work is not duplicated and our limited resourced are used efficiently?

Answer: The USTR has lead responsibility for coordination of Harmonized System work within the Executive Branch, with the private sector, with Congress, and in negotiations with our trading partners. Tne USTR must draw on the resources ot other agencies, and an essential element of this process is to ensure that these resources are used efficiently and effectively without wasteful duplication.

At the request of the President, the USITC prepared a conversion of the TSUS into Harmonizea System format and, on June 30, 1983 submitted it for Administration review. At this point, responsibility for the issue shifted to USTR.

In addition to the Administration review of the conversion, USTR is responsible for negotiating U.S. adoption of the Harmonized System as an international agreement, for coordinating submission of the legislation necessary to carry out such an agreement, and for maintaining our international tariff rights and obligations through renegotiation of our converted tariff schedule and the converted tariff schedules of all other major trading countries under the provisions of the GATT.

We've seen a significant increase recently in the amount of foreign steel sold in the United States. In fact, the Chairman of U.S. Steel Corporation, David Roderick, has called for a limitation on steel imports of 15% of the American market. Do you believe this is a wise policy, and if not, how can we deal with low-priced foreign imports while at the same time revitalizing our own steel industry?

ANSWER

We are opposed to the steel quota bill to which you refer. This quick fix remedy undermines existing procedures for dealing with imports already legislated by Congress. We presently have under investigation 42 cases involving unfair trade claims against our trading partners. In fact, nearly two-thirds of the steel imports from the developing countries are currently either covered by unfair trade findings or under investigation under these statutes. Once these cases are resolved we should have a fairly complete response to the unfair trade problems for some time to come.

In addition, Bethlehem Steel and the United Steelworkers have filed a petition under Section 201 of the Trade Act seeking import relief from steel imports. We do not oppose the filing of this case. If the U.S. International Trade Commission finds that imports have been the major cause of injury of this industry, and the President finds relief to be in the national economic interest, import relief will be provided.

It seems ludicrous to pre-empt these existing investigations by legislating an arbitrary solution to this problem, especially while these other investigations are still in progress. If we legislate a solution for this industry, every other industry with any political muscle will also attempt to circumvent established procedures, leaving the existing statutes to the less well off.

This Administration opposes the steel quota bill in the strongest possible terms. Such legislation is inconsistent with our international trade agreements and circumvents trade statutes that have proven effective when utilized correctly in response to unfair practices. Further, it will cause other U.S. industries to pay the price of protectionism through foreign retaliation and artificially increased prices.

The United States and the European Community concluded an agreement last year to reduce regulatory barriers to the wine trade. As you know, however, legislation is pending in the House and Senate to force wine importers to remove remaining barriers or face similar restrictions in the American market. Doesn't it make sense to equalize trade restrictions, rather than allow the European wine industry to have an unfair advantage?

ANSWER

The Wine Equity Act was introduced in the Congress for the purpose of equalizing import restrictions on the trade in wine including that between the U.S. and EC. The original sponsors were of the opinion that U.S. exports of wine to the EC face unreasonable restrictions, which puts the U.S. wine exporters at a disadvantage. That is not an entirely accurate perception.

A major form of trade restriction is duty charged on imports of a product. Currently, duties imposed on wines imported into the U.S. and the EC are not significantly different. Using 1983 exchange rates, the average retail price per liter of U.S. wine selling in the EC last year was $4.20. The EC duty on this liter was $0.13 which is equivalent to 3 percent of the retail price. The average retail price per liter of EC wine sold in the U.S. was $4.17. The U.S. duty was $0.10 per liter, equivalent to 2 percent of its retail price. This approximate balance in duties between the U.S. and EC has been achieved through past negotiations.

Since the end of World War II it has been the policy of the United States to promote the liberalization of world trade. This goal has been pursued through a series of multilateral trade negotiations in which an effort has been made to equalize trade restrictions among all the world's trading nations on a large range of products. This is achieved through the balancing of concessions among the negotiating nations. The current import duty on "wine not over 14 percent alcohol and in containers not over 1 gallon" is 37.5 cents per gallon. This is the category under which most wine is imported. This duty was negotiated in 1951 with France and Germany and in 1956 with Chile---long before the U.S. wine industry was interested in exporting. This rate is applied on a most-favored-nation basis.

Countries export products for which they have a comparative advantage and seek a reduction or elimination of importing nations' duties that weaken price competitiveness. Tariff concessions are granted by one country to another in return for reciprocal benefits, that is, by a balancing of concessions. This means that various nations' tariffs on the same product will differ to reflect past negotiations.

The Wine Equity Act, as proposed, would seek to address a difference in treatment that exists between the U.S. and EC on wine, without taking into account the fact that concessions on wine were negotiated only after other concessions were made on a wide range of products.

It has long been a U.S. policy to avoid the negotiation of trade barriers on a sectoral basis. Only by weighing all elements of the entire spectrum of trade will the balancing of concessions, necessary to promote the expansion of trade, occur. Otherwise, trading partners will erect sectoral barriers, which will, in the end, result in the contraction of world trade.

Q. Last year Congress provided an additional Deputy for the Office of the U.S. Trade Representative, bringing the total to three. Could you explain the division of labor between you and other two Deputies?

A. There are currently three Deputy U.S. Trade Representatives, all of whom report directly to the U.S. Trade Representative. Two of the Deputies are responsible for managing the trade policy process from Washington, and the third is responsible for managing the Geneva office.

The two Washington Deputies divide responsibilities according to organizational lines. The office is basically divided into two groups. One group deals with trade policy issues from the sectoral perspective and is subdivided into staff specialists on agriculture, industry, investment, and trade policy generally. The other group is responsible for managing our bilateral relationships and for representing the United States in multilateral fora.

Each of the two Washington Deputies is responsible for managing one of the groups. I am responsible for the sectoral and trade policy group, and my counterpart, Mike Smith, manages the bilateral group.

I should note, however, that this division of authority is not absolute. There is often cross-over.

Q. One of the three deputies, Ambassador Lighthizer, is responsible for sectoral activities. As you may know, the International Trade Administration recently reorganized along economic sectoral lines as well. What sectoral activities are pursued by USTR, and do you know how they differ from those of ITA?

A. The International Trade Administration (ITA) of the Commerce Department has recently reorganized its trade policy development section into various industrial sectors. USTR is similarly organized although we have far fewer staff analysts.

The one big difference between the way USTR is organized compared to ITA is our coverage of the agricultural sector. Since we have responsibility for both agricultural and industrial trade policy issues, we have one section devoted entirely to doing analytical work on trade policy issues affecting the agricultural sector.

Although USTR's organization for industrial policy is similar to ITA's, the activities undertaken by both organizations are quite different. USTR coordinates the views of other agencies in an effort to develop trade policy positions that reflect a consensus within the Administration. We also negotiate with foreign governments. Our resources for analytical purposes are somewhat limited. ITA, on the other hand, does more indepth analysis and provides analytical support for export promotion activities.

Do you support S. 121, the trade reorganization bill? Why does USTR need to be eliminated?

The Administration supports S. 121, a bill to consolidate

the trade functions within the Executive Branch.

USTR would be eliminated in order to place

responsibility for both trade policy making and implementation in a single department.

Question

Does USTR support another restraint agreement for automobiles with Japan for 1985?

Answer

When the Japanese Government initiated its unilateral export restraints. the U.S. automotive industry was in its severest slump in twenty years. The Japanese restraints provided the necessary stability in the marketplace in order for U.S. auto manufacturers to embark on a $50 billion spending program to enhance its productivity and enable the introduction of a new generation of fuel-efficient front-wheel drive autos. The costs to consumers of this action were relatively low due to the overall depressed level of demand for both domestic and imported cars.

The current situation is markedly changed. Auto sales are strong. U.S. auto companies are showing record first quarter profits that could exceed $9 billion for the year. Continuation of these profits could fully restore the financial strength of these companies which had eroded over pervious years and make them more competitive. However, increased demands upon these funds, not for productivity improvements, but to give executives large bonuses and fatten pay checks cast some doubt about the determination of this industry to reduce costs and increase its competitiveness. Japanese export restraints should not result in forcing the consumer to pay more for an auto in order to cover unnecessary corporate outlays.

In the present environment, I must seriously question whether the continuation of the Japanese restraints beyond their current expiration date is in the public interest, particularly if U.S. auto manufacturers and unions have not learned from their past mistakes.

Q: Does USTR think that steel company mergers such as LTV and Republic are in the best interest of American competitiveness against foreign companies?

A: The question is difficult to answer in the abstract. Each proposed merger would have to be viewed on a case by case basis. In our view the LTV/Republic merger should strengthen the competitiveness of the U.S. industry. Each company has certain facilities which can be fairly readily combined with those of the other to improve efficiency and reduce both production and transportation costs. Less efficient operations currently carried out by each firm can by modified. We would expect this to result in a certain trimming of excess steelmaking capacity but to yield, in the end, a more efficient, competitive operation.

Questions from the Senate Appropriations Committee

4. What is the Administration doing to stop the flow of counterfeit goods from abroad?

The Administration is attacking the problem of imports of goods bearing counterfeit trademarks at the point of importation and at the source. Domestically, the Treasury Department initiated Operation Tripwire, a program designed to improve enforcement of the laws authorizing seizure of goods bearing counterfeit trademarks and of unauthorized copies of copyrighted works. As part of its efforts to improve the protection provided intellectual property rights world wide, the Administration has held bilateral discussions with Korea and Singapore, suggesting improved laws, increased criminal prosecutions, stiffer penalties, and greater oversight of exports as means of combatting commercial counterfeiting. The American Institute in Taiwan held similar consultations with the Coordination Council for North American Affairs last year and this year about counterfeit goods originating in Taiwan. Bilateral discussions with other countries recognized as sources of counterfeit goods will be held in the coming months. Internationally, the Administration has worked diligently to develop a code in the General Agreement on Tariffs and Trade that would require signatories to seize goods bearing counterfeit trademarks at the border and destroy them, thereby preventing them from being reexported to a third country market.

I understand USTR is drafting a bill to authorize the President to create a free trade area with Israel. When will that proposal be ready? Can you outline the major points of the proposal?

President Reagan and Israeli Prime Minister Shamir agreed on November 29, 1983 to begin discussions between our two countries on the establishment of a two way free trade area. A free trade area (FTA) is formed when two or more countries elinimate duties and non-tariff barriers on substantially all trade between them. While neogotiations began with the Israelis in mid January, we will not undertake detailed negoatiations on product coverage and staging until we receive economic advice from the International Trade Commission on probable economic effects of eliminating U.S. duties. This advice should be received in early June.

We expect that it will be necessary to obtain Congressional approval for some form of tariff negotiating authority with the understanding that any agreement would be subject to Congressional approval under the expedited procedures set forth in the Trade Act of 1974.

6. U.S. nationals' intellectual property rights are sometimes jeopardized in foreign countries. What is the Administration doing to ensure that those rights are protected?

This Administration has held bilateral discussions with Hungary, Korea, Mexico, Singapore and Taiwan, expressly dealing with improvements to intellectual property rights provided foreign nationals in those countries. Follow-up discussions are conducted on a regular basis. We have included discussions of intellectual property rights issues in trade discussions with other governments, including Australia, Brazil, Canada, Costa Rica, the E.C., Hong Kong, Israel, Japan, and others, when appropriate. For example, Administration officials protested strongly when the Ministry of Trade and Industry in Japan proposed removing computer software from the scope of its copyright law and providing a new form of protection that would be much weaker. The Administration supports S. 144, including express language on intellectual property rights in section 301 of the Trade Act of 1974 and the proposed substitute to S. 875, the Trademark Counterfieting Act. Internationally, the Administration prevented amendment of the Paris Convention for the Protection of Industrial Property to include a provision permitting exclusive compulsory licensing.

Last year, the Congress provided $140,000 for word processors for the USTR. Have these funds been expended?

We are in the final stages of evaluating vendors' proposals.
The $140,000 has been obligated.

We provided $100,000 in 1984 for professional staff training after discussions with Members of the Senate Finance Committee. How do you plan to use these funds?

For the remainder of this fiscal year, we are planning to focus our efforts on three of the recommendations of our initial study; assessment of developmental needs of a selected group of professionals, improvement of institutional memory, and seminars designed for the senior staff.

USTR is requesting an increase in the representation allowance of $8,000 to $68,000. What needs have arisen that justify this increase?

We have asked for an increase for these reasons:

1. Rising costs.
2. More trips to higher cost cities.
3. Additional Deputy with Ambassadorial rank.
4. More trips by the Chief Textile Negotiator who holds Ambassadorial rank.
5. Unanticipated assignments, e.g., China, Caribbean countries, European Community.
6. Additional negotiations on Bilateral Investment Treaties, e.g., Africa, Asian countries.
7. Hosting of high level Trade Ministers meetings in the U.S.
8. Gearing up of Harmonized Code activities which means more travel to Europe, LDCs.
9. Increasing number of international meetings which require high level of U.S. representation.

Without the assistance of other agencies last fiscal year, we would have run short of representation funds.

SUBCOMMITTEE RECESS

Senator **Rudman**. We will conclude and meet again April 30 when we will hear requests from the U.S. Supreme Court, the U.S. District Courts and Courts of Appeals and the Arms Control and Disarmament Agency.

[Whereupon, at 11:20 a.m., Wednesday, April 4, the subcommittee was recessed, to reconvene April 30, 1984.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

MONDAY, APRIL 30, 1984

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 2 p.m., in room S-146, the Capitol, Hon. Warren Rudman presiding.

Present: Senators Rudman and Specter.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENTS OF:

LEWIS F. POWELL, JR., ASSOCIATE JUSTICE
SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE

ACCOMPANIED BY:

MARK W. CANNON, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE
ALFRED WONG, MARSHAL
JAMES A. ROBBINS, PERSONNEL AND ORGANIZATIONAL DEVELOPMENT OFFICER
CYRIL A. DONNELLY, BUDGET OFFICER

INTRODUCTION OF WITNESSES

Senator RUDMAN. The subcommittee will come to order.

On behalf of our chairman, Senator Laxalt of Nevada, I am delighted to sit in for him today and welcome you to our hearings. We are going to have testimony today from Justice Lewis F. Powell and Justice Sandra Day O'Connor on the budget request of the Supreme Court of the United States. We will also include for the record a statement by the Architect of the Capitol, Mr. George White, on the building and grounds account of the Court.

[The statement follows:]

PREPARED STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

SUPREME COURT, CARE OF THE BUILDING AND GROUNDS

Mr. Chairman and Members of the Committee:

I am pleased to provide the Committee this statement which is a brief summary of the fiscal year 1985 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1985, we have requested a total appropriation of $2,242,000. This represents a decrease of $352,000 under the total of $2,594,000 for 1984, which includes a pending pay supplemental request in the amount of $23,000 and a proposed program supplemental of $600,000 for security system improvements.

Increases requested are: $30,500 for annualization of Civilian Pay Act and Wage-rate pay increases effected in January 1984, related benefits, premium pay and within-grade salary advancements authorized by law; $2,000 to offset increased costs due to inflation for goods and services procured for annual recurring maintenance items, that is, general repairs and air conditioning maintenance; and $5,000 for the disposal of solid waste.

Nonrecurring items requested total $357,000 and very briefly include: improvements to the heating, ventilating and air conditioning systems ($200,000), modify the third floor stairways leading to the balcony bookstacks ($37,000), installation of a marble screen wall to provide a more appropriate setting for the John Marshall Statue ($60,000), and replacement of the electrical lighting panel boards ($60,000).

PROGRAM SUPPLEMENTAL

In addition I have requested a program supplemental in the 1985 Budget for fiscal year 1984 in the amount of $600,000 for Security System Improvements. This request has been included in the 1985 Budget, as transmitted, and is justified separately as a Fiscal Year 1984 Supplemental.

That concludes my summary and I shall be pleased to provide any further information that the Committee deems appropriate.

INTRODUCTION OF JUSTICE POWELL

Senator RUDMAN. We are very pleased to have both of you with us today. Justice Powell, you may read or summarize your statement, as you see fit. Of course, the entire statement will be included in the record of this hearing.

Justice POWELL. Thank you very much, Senator. I will present a brief summary and then we can move on to questions.

We appreciate the opportunity to be here, as we always do. I think you met the officers of the Court who were outside when we came in together. As you suggested, the basic budget submission has been filed, I think perhaps 1 week or 10 days ago. A statement under my name also has been filed. I will summarize that very briefly.

BUDGET REQUEST

The total Court budget estimate for fiscal year 1985 is $16,385,000. This includes $14,143,000 for salaries and expenses of the Court and $2,242,000 for building and grounds.

As you said, Senator, George White, the Architect of the Capitol, has submitted a budget request. The estimate for the Court itself reflects a net increase of $161,000 over the budget authority for fiscal year 1984.

I should mention one change in the budget request previously filed. Optimistically, we had included $35,000 expecting the Federal judges would receive the 3.5-percent pay increase. [Laughter.]

As it now appears this increase will not be forthcoming, we have removed it, or will remove it. But that $35,000 remains in the figures that you have that we previously submitted.

Senator RUDMAN. I imagine that if things change, Justice Powell, we will put it back in.

Justice POWELL. We would be very grateful if you did. A few other Federal judges around the United States would also be grateful.

Senator RUDMAN. Sure. I have heard from several. [Laughter.]

Justice POWELL. I am sure you have.

The most pertinent changes are set forth on page 1.4 of our budget submission. There are some offsetting items. Increases total $457,000. They occur in the adjustments to base and built-in changes over the budget authority for fiscal 1984. For the most part, these are built-in increases over which we have no control. They include in-grade salary increases, promotions and merit pay increases, supplemental pay costs annualized, and one extra working day. The total also includes an increase in library expenses of $43,000. This item goes up every year.

MOTOR VEHICLE

The only new program is rental expense of $3,000 for one additional sedan.

We have two offsets to the increased cost. The first is a $99,000 salary reduction as a result of eliminating five police positions. We think that is made possible by the anticipated installation of electronic security devices.

The second is the estimated cost of $200,000 for future printing of U.S. Reports.

Taking these estimated reductions into account, the net increase of our request for the operations of the Court itself is $161,000.

PRINTING OF U.S. REPORTS

Before concluding, I would like to add a word about the status of the printing of the U.S. reports. We have encountered difficult technical problems that have delayed the printing and binding of these volumes. These difficulties have not yet been resolved. The budgeting personnel believe the reserve set-aside for the reports is adequate and that the estimate of the reduction is realistic.

Senator, that concludes my quite brief summary statement.

Senator RUDMAN. Thank you very much, Justice Powell. That does cover the salient points of your request.

[The statement follows:]

PREPARED STATEMENT OF JUSTICE LEWIS F. POWELL, JR.

SUPREME COURT OF THE UNITED STATES

Mr. Chairman and Members of the Committee: Justice O'Connor and I appreciate this opportunity to appear before you in support of the budget requirements of the Supreme Court for fiscal year 1985.

We have with us today Dr. Cannon, Administrative Assistant to the Chief Justice; Mr. Wong, Marshal of the Court; Mr. Robbins, Director of Personnel; and Mr. Donnelly, Budget Officer.

At the outset, I mention one change in the budget request previously filed. This is a reduction of $35,000 that was included originally on the mistaken expectation - perhaps it would be more accurate to say "hope" - that federal judges would be included in the 3.5% pay raise for fiscal 1984. Of the $35,000, $26,000 is applicable to fiscal year 1984 and $9,000 to fiscal 1985.

In the balance of my statement this morning, and to facilitate understanding, I will use the same figures contained in the budget request as previously submitted. We assume that you and your staff will reflect this reduction at the appropriate time.

Our total budget estimate for fiscal year 1985 is $16,385,000. This includes $14,143,000 for Salaries and Expenses of the Court, and $2,242,000 for Care of the Building and Grounds.

My statement will be limited to the operation of the Court. Mr. George White, Architect of the Capitol, will submit testimony for the record concerning his segment of the total budget.

The estimate of $14,143,000 for Salaries and Expenses of the Court itself for the next fiscal year is an increase of $161,000 over the budget authority for fiscal 1984.

As appears from page 1.4 of the Court's operating budget statement, there are increases - in Adjustments to Base and built-in changes - over the budget authority for 1984 that total $457,000. These include: (i) in-grade salary advancements; (ii) one extra working day; (iii) annualization of the fiscal year 1984 proposed supplemental pay costs; and (iv) Social Security taxes; and (v) promotions and merit increases. Also included is an increase in library expenses of $43,000.

The greater portion of these increases are costs over which we have no control.

The only expense classified as a new program is the rental expense of $3,000 for an additional passenger car. Thus, total increases amount to $460,000.

As offsets against this increase, the Court is making two adjustments that reduce our base. I would like to clarify the rationale for each item. The first decrease is $99,000 resulting from abolishing five police positions. This was possible because of a reorganization of the police force. It should help offset the cost of electronic security devices requested by the Architect of the Capitol on behalf of the Court in a supplemental budget submission for fiscal year 1984.

The second decrease is the estimated cost - in the amount of $200,000 - of printing Supreme Court Reports. This would bring to a total of $400,000, estimated reductions in the ultimate cost of printing these reports since the implementation of computerized printing.

I add a word about the status of our official Reports. We have encountered difficult technical problems that have delayed the printing and binding of these volumes, and these difficulties have not yet been resolved. Our budgeting personnel nevertheless are confident that reserves set aside are adequate, and that the estimated reduction is realistic. You will recall that although there always is delay in printing the Reports, the Court's budget each year estimates the future cost and this is held in a reserve.

I should make clear the distinction between the printing of the Reports and our use of word procesing and the printing of opinion drafts and slip opinions. The later function continues to meet fully our expectations.

The reductions mentioned total $299,000. They reduce to $161,000 the net increase in our request for the Court itself.

The budget request for Care of the Building and Grounds, however, reflects a decrease of $352,000. Thus, viewing the Court's budget as a whole, a net decrease of $191,000 is projected.

The only program change would be the addition - on a rental basis - of the one additional automobile I have mentioned. The Court's motor pool now has only five passenger vehicles and a station wagon. At times, these have been inadequate.

This concludes a brief summary of our request. The Court's detailed budget submission - prepared by the Court's Budget office - has been filed with the Committee. Of course, Justice O'Connor, and the officers of the Court who are present, will endeavor to answer any questions that you may have.

THE JUDICIARY
SUPREME COURT OF THE UNITED STATES
($ in thousands)

Estimate by BudgetActivity	1983 Actual Pos.	1983 Actual WY	1983 Actual Amt.	1984 Enacted Pos.	1984 Enacted WY	1984 Enacted Amt.	1984 Anticipated* Pos.	1984 Anticipated* WY	1984 Anticipated* Amt.	Current 1985 Estimate Pos.	Current 1985 Estimate WY	Current 1985 Estimate Amt.
Salaries and Expenses	320	325	12,675	322	348	13,635	322	348	13,982	317	343	14,143
Care of the building and grounds	33	32	2,000	33	34	1,971	33	34	2,594	33	34	2,242
Total, Supreme Court	353	357	14,675	355	382	15,606	355	382	16,576	350	377	16,385

*Includes proposed supplementals, rescissions, deferrals.

Office of the Marshal
Supreme Court of the United States
Washington, D. C. 20543

April 30, 1984

Dear Mr. Chairman,

On behalf of Chief Justice Warren E. Burger and the Supreme Court Budget Committee, I respectfully submit updated information relating to the fiscal year 1985 budget request for the Supreme Court of the United States.

Page 1.2 of the budget submission is revised to reflect a change from 117 to 149 in the projected cases to be granted review during 1983 Term.

This information is submitted for record.

Very truly yours,

Cyril A. Donnelly
Budget Officer

Enclosure

Honorable Paul Laxalt, Chairman
Subcommittee on Commerce, Justice and State,
the Judiciary and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

STATEMENT SHOWING CASES FILED EACH TERM; CASES TERMINATED AND CARRIED OVER TO NEXT TERM

(October Term 1982 - Corresponds with Fiscal Year 1983)

Term	Case Filings During Term	Carried Over From Prior Term	Total Cases on Docket	Breakdown of Cases on Docket		Total Cases Disposed of	Total Cases Not Disposed of
				(Orig. & Paid)	(In Forma Pauperis)		
1960	1957	356	2313	1058	1255	1928	385
1965	2802	482	3284	1453	1831	2693	591
1970	3419	793	4212	1923	2289	3422	790
1975	3940	821	4761	2366	2395	3806	955
1979	3985	796	4781	2532	2249	3811	970
1980	4174	970	5144	2773	2371	4255	889
1981	4422	889	5311	2957	2354	4433	878
1982	4201	878	5079	2727	2352	4009	1070
1983*	1924	767	2691	1477	1214	1682	1009
1983**	(4325)	(750)	(5075)	(2700)	(2375)	(4075)	(1000)

STATEMENT SHOWING CASES ARGUED, DISPOSED OF BY OPINION AND CASES REVIEWED AND DECIDED WITHOUT ARGUMENT DURING TERM OF COURT

Term	Cases Granted		Cases Reviewed and Decided without Argument During Term	Cases Granted Review During Term
	Argued This Term	Argued Cases Disposed of by Opinion		
1960	148	147	N/A	137
1965	131	130	103	156
1970	151	148	192	161
1975	179	176	184	172
1979	156	155	124	154
1980	154	152	122	183
1981	184	170	126	201
1982	183	174	119	179
1983*	80	5	17	56
1983**	157	145	121	149

*Actual as of 12/15/83
**(Projection For Full Term, as of 3/8/84)

COURT WORKLOAD

Senator RUDMAN. I just have a few questions.

Last year we discussed the increased workload on the judiciary as a whole, and on the Supreme Court in particular due to the huge volume of appeals and petitions being filed. I was very pleased to read extensive coverage of Justice O'Connor's speech at Dartmouth College in New Hampshire earlier this month. It was a very well received speech, I might add.

You opposed, of course, the creation of a national court of appeals to screen cases. You have previously suggested, and I must tell you I agree, from my point of view, that we restrict the review of such things as habeas corpus petitions and section 1983 and 1988 cases.

I wonder if you would want to give us a summary of your feeling on that for the record today. The Court, of course, very properly, does not appear before the Congress on very many occasions, and I think that the Court shouldn't under the separation of powers doctrine. But I certainly think this is a good opportunity for you to state for our record what you have already stated publicly.

Justice O'CONNOR. Senator Rudman, I have expressed publicly already interest in the proposal that the Chief Justice has made for a national court of appeals to which our Court could refer some cases annually. Particularly what that would enable the Court to do is to resolve more of the conflicts in Federal law which emerge by virtue of the work of the various Federal appellate courts. It would simply enable the Court to do a more effective job of removing uncertainties in the area of Federal law.

Any proposal to also give to that court, if it were to be established, the power to initially screen cases that would come to the Supreme Court is one which I have not thought would be particularly helpful to our Court.

Senator RUDMAN. You think the present procedures or powers that you have, not to say in certain cases, are adequate?

Justice O'CONNOR. I think, speaking for myself, yes. And that the need is an expansion of our capacity to resolve unsettled areas of Federal law.

Senator RUDMAN. Justice Powell, do you want to comment on that at all? You have watched the workload grow for some time.

INCREASED FILINGS

Justice POWELL. Right. I agree substantially with Justice O'Connor. If you want a figure on the workload, I checked it in the most recent report of the administrative office, just the workload for the entire federal system. June 30, 1983, for the period ending on that date, 241,842 cases filed with district courts. That is a very substantial increase over the preceding year. I think in this room last year we mentioned, if I recall the figure correctly, it was about 206,000. The increase since 1970 can be accented by the fact that only 87,321 cases were filed in 1970, up against 241,000 filed last year.

COURT CASES DURING PAST YEAR

Senator RUDMAN. How many cases did the Court take this past year?

Justice POWELL. As of the corresponding date last term, I think you would be interested in this, we had docketed 3,374 cases. They were petitions for certiorari primarily, but also appeals are still significant. This term it is, curiously enough, 3,371, a difference of only 3. So we are receiving filings at about the same rate as last year. Last year total cases docketed were 4,201. This year we have estimated about 4,300. But as of this date, that slight difference in increase has not materialized.

Senator RUDMAN. Typically, how many petitions would you issue out of Court?

Justice POWELL. Last year there were 183 cases argued and this year there have been as of Wednesday of last week 184 cases argued. That does not mean we will produce 184 opinions. Some of them were consolidated appeals. I think last term, Justice O'Connor, we ended up with about 155 formal Court opinions, exclusive of per curiam opinions.

Senator RUDMAN. Knowing a little bit about what that is all about, that is about as great a load as possible to produce quality work. I had a discussion with my friends in New Hampshire Supreme Court several weeks ago about the workload and what is happening in that State. That State has been growing so enormously. They accepted and had opinions other than cert hearing opinions for the five justices of the Supreme Court of approximately 195 cases. They were pointing out that they now have to go to the legislature and even maybe do some constitutional work because of the absolute right of appeal in some cases in our constitution, although they do want to have the right of certiorari and such to screen.

The bottom line is we have to find ways and means to assure that the courts of this country, not only the U.S. Supreme Court but others, though all we can be concerned about at this level is the U.S. Supreme Court, not get so deluged with work that the important cases do not have the time that they need.

Justice O'CONNOR. That is right.

Senator RUDMAN. That is a real problem.

PAY SUPPLEMENTAL

There were some questions here that you answered in your remarks that staff had prepared. I just want to ask you this one. If you can't answer this today, then you certainly are free to answer for the record.

The Supreme Court is requesting $347,000 in a pay supplemental for fiscal year 1984. I wondered what your current vacancy rate was and whether or not any of this amount might be absorbed or whether that is an actual amount needed. If you would like to answer it here, fine. If you would like to answer for the record, fine.

Justice POWELL. I would suggest we answer for the record.

Senator RUDMAN. Fine.

[The information follows:]

SUPREME COURT PERSONNEL VACANCIES

The Supreme Court of the United States has three hundred twenty-two (322) authorized full-time permanent positions, thirty-one (31), or ten percent (10%), of which are currently vacant. The Police Force has been involved in a reorganization that included a temporary hiring freeze which resulted in a high number of police vacancies. We are currently recruiting in order to fill a number of these vacancies. It appears that the Supreme Court will not require the Fiscal Year 1984 pay supplemental and will be able to absorb the impact of the pay increase.

PRINTING SAVINGS

Senator RUDMAN. You also have a savings of about $200,000 in printing costs through automation. I take it that you anticipate maybe even further savings in the coming year. Or is this a one-time savings?

Justice POWELL. No. We have received the savings we had anticipated in the past 2 years as a result of operating a print shop. The problem exists with the printing of U.S. Reports. Traditionally the style and quality of printing have been unique. The Reporter for the Court, Mr. Lind, properly insists that this quality be maintained. Our present equipment is having difficulty in meeting its high standards. We have no problem with the word processing equipment in our offices. It transmits opinions downstairs to the Atex computer printer. As Justice O'Connor was saying, perhaps before you came, it couldn't be better. We get excellent service in that respect. But we are behind in getting out the U.S. Reports.

NET BUDGET DECREASE

Senator RUDMAN. We notice you are anticipating a possible budget freeze for the next fiscal year by requesting $191,000 less for 1985 than 1984 for the total Supreme Court accounts. I hope that that can hold.

Justice POWELL. I would be surprised if it did.

Senator RUDMAN. We are glad at least to see the effort you made.

We have a few questions for the record. We are always delighted to have you here, and are particularly delighted that the Chief Justice chose to ask you to come over here. We are delighted to see you.

Senator Specter just walked in. You almost got away scot free. [Laughter.]

Senator Specter, before these two witnesses leave, would you care to ask them something?

TIMELY DISPOSITION OF CASES

Senator SPECTER. I am sorry that I am late. We just had our first vote of the afternoon.

One of the questions which concerns me is the length of time on the disposition of cases in the Federal system, and the corollary problem of very protracted opinions. This is a subject I had discussed with you last year, and in 1981 as well.

I wondered if you had any thoughts concerning the advisability of the Congress perhaps legislating on the subject, as we have on the Speedy Trial Act in criminal cases. It is the same question, but perhaps with some additional perspective with the passage of some additional time.

Justice POWELL. I will respond first and I am sure Justice O'Connor would perhaps like to respond also.

I think it would not be advisable to try to put a time limit on Federal judges that would be comparable to the Speedy Trial Act. My own opinion is Federal judges are working about as hard as they can work. That is perhaps not necessarily true of all of them, but certainly I know they work very long hours.

I think the quality of opinions could suffer if there were time limitation. But the workload imposes an enormous burden, I think. Before you arrived, Senator Specter, I mentioned that cases filed in the district courts for the 12-month period ending June 30, 1983, totaled about 217,000 cases, up substantially over 206,000 the preceding year.

Additional judges have not been put on the courts to deal with that sort of workload. I think that you are aware that the Supreme Court of the United States has not allowed substantial delay in bringing down its opinions. There may be a case argued in October that doesn't come down until June, but that is quite the exception. Generally we will hand down opinions, almost invariably in every case, before we take 2 months off to get caught up on reading and do some advanced reading on briefs for the next term.

Senator RUDMAN. I think if Senator Specter has an amendment, I am probably going to offer a second amendment to do something like passing the bankruptcy bill. [Laughter.]

Justice POWELL. Justice O'Connor, would you comment?

Justice O'CONNOR. I would echo part of what Justice Powell says, Senator Specter. It has been remarkable in a number of the Federal circuits that the judges have been able to keep up with the increase in the filings with the workload we have had and not fall further behind. Some of the circuits have done a wonderful job. I have been assigned to the sixth circuit. I have been very impressed there with how they have been able to keep up with a substantially increased workload.

So overall I think the courts have done a pretty good job. There are certainly specific examples when a court has failed to hand down a decision and it has dragged on for a long time. I am sure we can find such examples, but I hope that they are rare.

Justice POWELL. Senator Specter, may I make two comments. First of all, I misspoke when I said 217,000 have been filed. It was 241,000 filed year ending June 30, 1983.

I am the Circuit Justice for the 11th Circuit of Florida, Georgia, and Alabama. Chief Judge Godbold has been determined to accelerate the advancement of cases in district courts from filing date until they go through his court. This has been more successful than the record would show at this time. I do know that he has this very much on his mind.

USE OF COMPUTERS AND WORD PROCESSING

With respect to the capital cases, for example, we now have a computer that keeps track of every capital case in the 11th circuit. The purpose is to make sure that those cases are processed in the Federal system as promptly as consistent with due process and the care that all of us try to exercise in capital cases. He has arranged coordination with the State supreme courts in those three States for the same purpose.

So I think that the problem that concerns you also concerns a number of thoughtful chief judges in the circuits.

Senator SPECTER. Mr. Justice Powell, speaking of computers, does the Supreme Court have computers, word processing equipment, which is the state of the art, to assist you in expediting the completion of your own opinions?

Justice POWELL. Yes, we do.

Senator SPECTER. Do the other Federal courts have that as well, if you know?

Justice POWELL. I think most of the Federal courts now have word processing. I do not know what the situation is with respect to printing opinions.

Senator RUDMAN. We have the Fifth Circuit Court of Appeals next. One of the judges, Judge Clark, is going to be here next. He will tell us some more about that.

COURT-ANNEXED ARBITRATION

Senator SPECTER. I have introduced legislation which would promote court-annexed arbitration based upon some experience which has been very successful in the U.S. District Court for the Eastern District of Pennsylvania sitting in Philadelphia. I wondered if either of you had any thoughts as to the advisability of such a move.

Justice POWELL. I think the Chief Justice has addressed that, hasn't he?

Justice O'CONNOR. He has, and he has spoken in support of court-annexed arbitration efforts. I also think that it is just a fine step to take.

As a State court judge, I happened to help put in place a court-annexed arbitration system in Arizona. We found it was very successful. Increasing the jurisdictional levels for mandatory arbitration is supportive of that effort.

Justice POWELL. I think Dr. Cannon could perhaps provide some information on what the Chief said.

Mr. CANNON. He addressed the subject of arbitration to the American Bar Association about 2 years ago and recommended that there be court-annexed arbitration throughout the United States wherever possible. He has encouraged it to be adopted more widely on the Federal system. As you point out, Philadelphia is one of the unusually successful examples where it has been tried in the Federal system.

The initial data indicate that the percentage of cases going to trial was cut in half in the early Federal experiments, which is really quite a remarkable achievement, particularly if that continues to be the case in other Federal districts as they adopt it.

There are some other Federal districts that are adopting it or are planning to adopt it. We have taken a survey recently and we are receiving letters responding to this.

INCENTIVE FOR BINDING ARBITRATION

I think one more thing, though, that the Chief Justice recommended—I don't know whether you have included this in your bill—is that we should avoid trying to make arbitration an extension of an already too protracted process, about which you, yourself, expressed concern earlier. And that is there should be an incentive not to go from arbitration unnecessarily to court. So he has recommended that wherever possible, they structure programs along the lines of what is done in Michigan, and that is if you reject what they call mediation, but it is really essentially arbitration, awards and go to court and do not do 10 or 15 percent better, then you must pay the lawyer's fees of the other side. So I think that incentive element is something that at least should be looked at in any effort to seriously expand arbitration.

MULTIDISTRICT CONSOLIDATION

Senator SPECTER. At the suggestion of some Federal judges, I also introduced legislation which would provide multidistrict consolidation which would apply to the trial process as well as to the pretrial process, which now provides for multidistrict consolidation. I would be interested in your reaction to that legislation, if you are in a position to give that.

Justice POWELL. I am not familiar with it.

Justice O'CONNOR. I don't have any experience with that, Senator Specter.

Justice POWELL. We have had a special court, as I expect you know, dealing with multidistrict litigation——

Senator SPECTER. Yes.

Justice POWELL [continuing]. And trying to pull it together. I don't know of any statutory authorization for it. Perhaps there is.

Senator SPECTER. As I understand it, the existing procedures only provide for consolidation of pretrial matters but do not provide for consolidation of the trials themselves. The statute which I have proposed would carry forward the consolidation approach to trials as well as pretrial proceedings.

Justice POWELL. It sounds like a good idea, although I have no direct opportunity to deal with that problem.

Senator SPECTER. Thank you very much, Justice Powell and Justice O'Connor. Very nice to see you.

Senator RUDMAN. Justice Powell and Justice O'Connor, thank you for being with us.

Justice POWELL. It is a pleasure to be over here.

SUBMITTED QUESTIONS

Senator RUDMAN. Senator Laxalt has additional questions which we will ask you to answer for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

ADDITIONAL MOTOR VEHICLE

Question. The Supreme Court is requesting an additional passenger motor vehicle for use by Justices and employees of the Court.

What are the needs that have generated this request? Are these needs different from last year, when the Court conceded the request for an additional vehicle?

Answer. The present motor pool, which consists of five leased passenger motor vehicles and a station wagon, serves the needs of the Associate Justices, Officers, and Senior personnel of the Court. Transportation requests for on-call motor pool services, and the daily trips for pick-ups and deliveries for Justices' Chambers and the operation of the Court have placed a burden on the existing motor pool. The needs generating this request have not changed from last year. However, after another year's experience with the inadequacies of the present motor pool, the Court feels justified in making this request.

VACANCIES

Question. Please provide the Committee with a list of positions (including the grade level of the position) currently vacant.

Answer. Supreme Court of the United States—Vacancies as of May 10, 1984: Law Clerk—SCP-12, Special Assistant to the Administrative Assistant—SCP-14, 2 Messengers—SCP-5, 4 Secretaries—SCP-6, Assistant Clerk—SCP-13, Junior Docket Clerk—SCP-7, Acquisitions Clerk—SCP-5, Under Library Assistant—SCP-5, Assistant Secretary—Reporter's Office—SCP-6, 21 Police Privates—$17,488 ea.

The gross vacancy figure of 34 permanent positions is offset by three temporary appointments which reduce the gross vacancy rate to a net figure of 31.

PAY SUPPLEMENTAL

Question. Does the FY 1984 pay supplemental request include funds sufficient to provide for 100% of needs, assuming no vacancies in authorized positions?

Answer. The funds requested in the FY 1984 pay supplemental provide for 100% of needs, assuming no vacancies in authorized positions. However, the Supreme Court will not require the FY 1984 pay supplemental and will be able to absorb the impact of the pay increase.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

STATEMENT OF CHARLES CLARK, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

ACCOMPANIED BY:

JAMES HARVEY, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF MICHIGAN

WILLIAM E. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

PREPARED STATEMENTS

Senator RUDMAN. Our next witness will be Judge Charles Clark of the Fifth Circuit Court of Appeals, who is Chairman of the Budget Committee of the Judicial Conference. In addition, statements will be included in the record on behalf of the budget requests of the Court of Appeals for the Federal Circuit, Court of International Trade, Administrative Office of the U.S. Courts, and the Federal Judicial Center.

[The statements follow:]

PREPARED STATEMENT OF HON. HOWARD THOMAS MARKEY
CHIEF JUDGE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

It is a pleasure to present this report Mr. Chairman. This is my twelfth presentation to the Subcommittee, the second in which I have the honor of speaking for the Court of Appeals for the Federal Circuit.

I am pleased to report a continuation of our past policies of close budget control and limitation of requests to those deemed absolutely necessary for mission accomplishment.

The Court has been in operation for 17 months. A major measure of our stewardship remains centered on the time interval between filing and disposition. I am happy to report that the Court has continued, throughout the throes of transition and startup, to maintain an interval of 7 months despite a growing caseload. We started business in October 1982 with a case inventory transferred from our predecessor courts and 930 new cases were filed in our first year of operation. We have nonetheless been able to keep our pending case inventory at 500, and continue to hear virtually every case within 30 days of its coming ready for hearing.

Concerning our requests, Mr. Chairman, the total of $6,414,000 includes $6,346,000 beyond our control. Of the items within our control, we are requesting an increase of $68,000 ($62,000 for 2 additional positions; $6,000 to meet inflation of 5% in costs of services and supplies). Our inflation-caused requirement is $8,000 but a $2,000 savings in our travel allotment enabled a reduction to $6,000 in the net increase sought beyond that required for the two additional positions.

One additional position is that of a technical assistant to the court. The Court Improvements Act of 1982 authorizes the

Court to appoint twelve technical assistants. We elected, however, to start with the one technical assistant inherited from the Court of Customs and Patent Appeals, and to follow our practice of requesting additional positions only after, not before, a need had been demonstrated. After 17 months of experience, a need for at least one additional technical assistant has been demonstrated. No request to fill any of the remaining 10 authorized positions will be submitted unless and until a need has been demonstrated.

Similarly, experience to date with the increased number of appeals has demonstrated a need for one additional clerical assistant to handle the many facets of case processing in the Clerk's office.

The Chairman will recall that last year responsibility for funding the reduced staffs (one secretary; one law clerk) of Senior Judges who continue to serve was transferred from the Administrative Office to the Court. We have accordingly included in this year's request additional funds for staffs of Senior Judges. One of our active judges took senior status in October of 1983. We now have three other judges eligible to take senior status. Our request for $128,000 covers four positions, $64,000 covering the staff of the judge who took Senior Status in 1983 and $64,000 in anticipation of the possibility that another judge may elect senior status before October 1985. If the latter event does not take place, those funds will, of course, be returned to the Treasury.

Once again a major segment (38%) of our total budget request is for the Standard Level User Charge (SLUC) imposed by GSA, which GSA has increased by 116% over that currently imposed. The $1,306,000 increase in the GSA charge constitutes 82% of our requested increase. I make no effort to justify this part of our request. The Court is but a conduit from GSA to the Congress respecting this large sum. I will but mention that Congress reduced the increase sought by GSA last year to 7%.

The division of space in the National Courts Building having been concluded, an amount of $146,000 will be transferred from this court's budget request to that of the Administrative Office.

PREPARED STATEMENT OF EDWARD D. RE
CHIEF JUDGE
U.S. COURT OF INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you again on behalf of the United States Court of International Trade.

The appropriation requested for fiscal year 1985 is $6,096,000, an increase of $270,000, or approximately 5%, over the adjusted $5,826,000 amount appropriated for fiscal year 1984.

Approximately 50% of that total increase is for charges imposed by General Services Administration for the rental of space, pursuant to the Public Buildings Act of 1972. The amount requested for the rental of space for fiscal year 1985 is approximately 8½% higher than the amount appropriated for fiscal year 1984. Of course, these charges are determined and imposed by the General Services Administration, and we have no part in arriving at the amounts charged.

Approximately 29% of the requested increase is attributable to non-discretionary costs:

1. The sum of $27,000 is necessary to provide for within-grade increases.
2. One extra compensable day in fiscal year 1985 requires $11,000.
3. The annualization of the pay raise granted in fiscal year 1984 requires $33,000.

4. The annualization of the "Social Security Amendments of 1983" requires $3,000.
5. The cost of reimbursement to the Employee Compensation Fund to be paid under the Federal Employee Compensation Act requires $4,000.
6. The sum of $8,000 is included for the continuation of the computer assistance legal research program.
7. The balance of the requested increase, $48,000, is to provide for anticipated increases in expenditures for telecommunications, postage and fees, travel, contract rates, charges for services, equipment, and law book continuations.

I previously submitted the Court's "General Statement" and "Justification of Changes" which provide detailed descriptions of the line item adjustments. If the Committee requires more information we will be pleased to submit it and I will, of course, answer any questions you may have.

PREPARED STATEMENT OF WILLIAM E. FOLEY
DIRECTOR
ADMINISTRATIVE OFFICE OF THE U. S. COURTS

OPENING STATEMENT FOR ADMINISTRATIVE OFFICE BUDGET REQUEST

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

IT IS AGAIN A PLEASURE TO APPEAR BEFORE YOU IN SUPPORT OF THE ADMINISTRATIVE OFFICE BUDGET REQUEST FOR FISCAL YEAR 1985, AND TO HIGHLIGHT NEW STEPS WE ARE TAKING TO ENSURE THE BEST USE OF JUDICIARY RESOURCES.

OUR BUDGET ESTIMATE FOR 1985 IS $29,360,000 WHICH, EXCLUDING ADJUSTMENTS TO THE BASE AND MANDATORY INCREASES, REPRESENTS AN INCREASE OF $717,000 OR 2.6 PERCENT OVER FISCAL YEAR 1984. WE ARE REQUESTING 19 NEW POSITIONS, AN INCREASE IN PERSONNEL OF 3.5 PERCENT

OVER 1984. THE REQUEST FOR PERSONNEL INCLUDES 6 POSITIONS TO SUPPORT EXPANDED COURT AUTOMATION; 2 POSITIONS FOR THE CENTRAL BANKRUPTCY NOTICING PROJECT; 3 POSITIONS TO COORDINATE IMPROVED CASE AND JURY MANAGEMENT; 5 POSITIONS RELATED TO ACQUIRING MODERN, COST-COMPETITIVE TELEPHONE SYSTEMS; 2 POSITIONS SUPPORTING ACCURATE AND TIMELY FINANCIAL SYSTEMS, AND A COURT REPORTER SPECIALIST FOR ELECTRONIC COURT RECORDING. THE BUDGET ESTIMATE SUBMITTED TO YOUR COMMITTEE DESCRIBES IN DETAIL THE PROGRAMS FOR WHICH THE ADDITIONAL FUNDS AND PERSONNEL ARE REQUESTED, BUT I WOULD LIKE TO TAKE A MOMENT TO BRING YOU UP-TO-DATE ON SOME OF THE MATTERS WHICH WE ARE CURRENTLY EMPHASIZING AT THE ADMINISTRATIVE OFFICE, WHICH ARE REFLECTED IN THIS BUDGET REQUEST.

WHILE THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS REMAINS RESPONSIBLE FOR OVERALL GENERAL ADMINISTRATION NECESSARY TO THE COURTS' OPERATIONS, MORE AND MORE OF THE DAILY ADMINISTRATIVE DECISIONS ARE BEING MADE BY THE COURTS BECAUSE THEY ARE BEING BETTER EQUIPPED TO DO SO.

WITH SMALL COMPUTERS BEING PLACED IN MANY CIRCUIT AND DISTRICT COURTS, THE ADMINISTRATIVE OFFICE IS ASSISTING THE COURTS IN ACHIEVING OPTIMUM UTILIZATION OF THE MACHINES. THIS INCLUDES OPERATIONAL SUPPORT TO THE USERS ON THE SYSTEMS, PROVIDING WHATEVER ENHANCEMENTS ARE NECESSARY, AND MONITORING HOW THE COURTS USE THE SYSTEMS WITH A VIEW TO GAINING BEST RESULTS. ALTHOUGH THE FEDERAL JUDICIAL CENTER DEVELOPS NEW SYSTEM APPLICATIONS, THE ADMINISTRATIVE OFFICE WILL PROVIDE THE COURTS ALL NECESSARY TECHNICAL SUPPORT ONCE A NEW APPLICATION HAS BEEN DECLARED OPERATIONAL.

THE NEED FOR SOUND CASE MANAGEMENT SYSTEMS IN EACH COURT WAS RECENTLY STRESSED BY THE GENERAL ACCOUNTING OFFICE WHICH HAS ALSO BEEN CRITICAL OF DISTRICT COURT JUROR UTILIZATION PRACTICES. THE ADMINISTRATIVE OFFICE IS SURVEYING COURTS' MANAGEMENT SYSTEMS FOR BOTH CASELOAD AND JUROR UTILIZATION AND PLANS TO IDENTIFY SUCCESSFUL METHODOLOGIES WHICH WILL BE MADE AVAILABLE TO THOSE COURTS WHICH NEED TO IMPROVE THEIR MANAGEMENT PRACTICES.

WITH THE DIVESTITURE OF AT&T, THE ADMINISTRATIVE OFFICE IS PLANNING TO REPLACE, AT AN OVERALL COST SAVINGS, THE EXISTING TELEPHONE SYSTEMS IN THE COURTS WITH MODERN DIGITAL COMMUNICATIONS EQUIPMENT. THESE SYSTEMS WILL EXPAND TELEPHONE SERVICE SUCH AS CALL FORWARDING AND TELECONFERENCING AND OFFER MORE EFFECTIVE HANDLING OF DATA COMMUNICATIONS. THE ADMINISTRATIVE OFFICE WILL PROVIDE FOR SITE EVALUATIONS, SYSTEM SPECIFICATIONS, CONTRACT REQUIREMENTS AND INSTALLATION OF THE NEW EQUIPMENT.

THE ADMINISTRATIVE OFFICE IS CURRENTLY IMPLEMENTING A FINANCIAL MANAGEMENT SYSTEM SO THAT A COURT CAN PAY JURORS ON A MORE TIMELY BASIS AND TRACK ITS OWN OBLIGATIONS AND EXPENDITURES FOR TRAVEL AND FOR PURCHASES OF SUPPLIES AND FURNITURE. DATA ENTRY AT THE LOCAL LEVEL WILL IMPROVE BOTH THE TIMELINESS AND THE ACCURACY OF FINANCIAL REPORTING, THEREBY GIVING THE COURTS THE OPPORTUNITY TO MANAGE THEIR OWN RESOURCES IN A MORE EFFICIENT AND PRODUCTIVE MANNER. IN THE MEANTIME, ADMINISTRATIVE OFFICE CONTROL OVER JUDICIARY FUNDING WILL BE, IN FACT, HEIGHTENED AS WE CAN SPOT TRENDS AND PROBLEMS EARLIER, THUS OFFERING MORE POSSIBILITIES TO RECOMMEND CHANGES AND IMPROVEMENTS.

EACH FEDERAL DISTRICT JUDGE NOW HAS THE OPTION TO USE ELECTRONIC SOUND RECORDING EQUIPMENT TO RECORD COURT PROCEEDINGS RATHER THAN THE TRADITIONAL STENOGRAPHIC TYPE REPORTING METHOD. TO THE EXTENT THESE ELECTRONIC SYSTEMS ARE IMPLEMENTED IN THE COURTS, MEASURABLE SAVINGS WILL RESULT. THE ADMINISTRATIVE OFFICE WILL ASSIST THE COURTS IN SELECTING AND INSTALLING THE EQUIPMENT, HOPEFULLY AS MANY AS 50 UNITS A YEAR.

OUR ROLE IS BECOMING ONE OF INSTALLING SYSTEMS AND ADVISING THE COURTS ON THEIR USE RATHER THAN MAINLY APPROVING ROUTINE PURCHASES FOR THE COURTS AND ENTERING THEIR STATISTICAL DATA. EQUALLY IMPORTANT TO THIS EFFORT, WE ARE OFFERING THE LOCAL MANAGERS IMPROVED WRITTEN GUIDELINES WHICH DETAIL GOVERNMENT AND JUDICIARY

POLICY AND PROCEDURE IN SUCH AREAS AS FINANCIAL CONTROL, PROCUREMENT OF GOODS AND SERVICES, OFFICIAL TRAVEL, AND STATISTICAL REPORTING.

MR. CHAIRMAN, AS YOU ARE AWARE, THE ADMINISTRATIVE OFFICE HAS ALWAYS BEEN A SMALL, EFFICIENT ADMINISTRATIVE HEADQUARTERS FOR THE JUDICIARY. OUR GROWTH OVER THE YEARS, IN PROPORTION TO THE SIGNIFICANT INCREASE IN COURT ACTIVITY, HAS BEEN MODEST. WHILE WE REMAIN THE PRINCIPLE SOURCE OF ADMINISTRATIVE SUPPORT TO THE JUDICIARY, OUR ROLE HAS EXPANDED TO INCLUDE PROVIDING THE COURTS WITH MODERN TECHNOLOGY. WITH MODEST INCREASES IN STAFF AND FUNDING, WE NOW OFFER TO THE COURTS EXPERT ASSISTANCE IN PROGRAM ADMINISTRATION, MANAGEMENT PRACTICES, AND INFORMATION SYSTEMS.

AS A FINAL NOTE, I WISH TO REPORT THAT ALTHOUGH OUR PLANS FOR RELOCATION AT A CONSOLIDATED SITE IN 1984 HAVE BEEN SET ASIDE DUE TO PROBLEMS BEYOND OUR CONTROL, WE CONTINUE TO WORK WITH GSA TO OBTAIN SUITABLE OFFICE SPACE. WE HOPE THAT, DURING FISCAL YEAR 1985, WE WILL HAVE SETTLED INTO A SINGLE LOCATION WITH THE FEDERAL JUDICIAL CENTER AND THE JUDICIAL PANEL ON MULTI DISTRICT LITIGATION. FUNDS REQUESTED FOR SPACE RENTAL CHARGES IN 1985 REFLECT ANTICIPATED RATES FOR SUCH A BUILDING.

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO SET FORTH OUR REQUIREMENTS FOR 1985. FOR THE MOST PART, OUR PROGRAM REQUESTS HAVE AS THEIR OBJECTIVE THE CONTINUED MODERNIZATION AND AUTOMATION OF JUDICIARY FUNCTIONS FOR IMPROVED COURT MANAGEMENT AND RESOURCE UTILIZATION. WE ARE PROGRESSING STEADILY IN THE IMPLEMENTATION OF AUTOMATED APPLICATIONS AND ARE BEGINNING TO SEE THE RESULTS IN MORE EFFICIENT AND ACCURATE REPORTING. IN CLOSING, I STRESS THAT WHILE WE DO SEEK AN INCREASE IN ADMINISTRATIVE OFFICE RESOURCES TO ACCOMPLISH OUR OBJECTIVES, THE PRINCIPAL BENEFICIARIES ARE THE GENERAL PUBLIC WHO APPEAR BEFORE THE FEDERAL COURTS AND THE MEMBERS OF THE BAR.

BUDGET ADJUSTMENT FOR FISCAL YEAR 1985

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

SINCE THE TRANSMISSION OF THE FISCAL YEAR 1985 BUDGET TO CONGRESS, THE ADMINISTRATIVE OFFICE HAS PLACED A FREEZE ON THE FURTHER EXPANSION OF THE BANKRUPTCY AUTOMATED NOTICING SYSTEM (BANS). THIS IS IN KEEPING WITH THE WISHES OF CONGRESS TO ENCOURAGE PRIVATE CONTRACTING OF THE NOTICING FUNCTION AT THE EXPENSE OF THE ESTATES IN BANKRUPTCY. THEREFORE THE SUM OF $525,000 AND TWO POSITIONS WILL BE CONCEDED. THESE CHANGES ARE NOT REFLECTED IN ANY OF THE NUMBERS OR DOCUMENTS TRANSMITTED TO THE COMMITTEE.

THE 1985 BUDGET FOR THE ADMINISTRATIVE OFFICE INCLUDES A TOTAL OF $1,450,000 FOR EXPANSION OF BANS TO 25 COURTS. SINCE THE SYSTEM WILL NOT BE EXPANDED BEYOND 16 COURTS, ONLY $925,000 OF THAT AMOUNT WILL BE REQUIRED, AND THE REMAINING $525,000 WILL BE CONCEDED. IN ADDITION, TWO POSITIONS REQUESTED IN THE 1985 BUDGET (MACHINE OPERATOR AND DISTRIBUTION CLERK) FOR THE PRINTING AND DISTRIBUTION FACILITY WILL NOT BE REQUIRED.

PREPARED STATEMENT OF A. LEO LEVIN

DIRECTOR

FEDERAL JUDICIAL CENTER

Mr. Chairman, it is a privilege to present for the record the Federal Judicial Center's appropriation request for Fiscal Year 1985. This request has been reviewed and unanimously approved by the Board of the Federal Judicial Center which is chaired by the Chief Justice of the United States. This is, I believe, a realistic budget; responsive both to the Center's Congressional mandate and to the need for fiscal restraint. I thank you for the opportunity to discuss the Center's work and the reasons for our budget request as well as for your support and interest in the past.

The Federal Judicial Center's request for FY 1985 is for $9,631,000. This represents an increase of $1,066,000 over our FY 1984 budget authority. However, nearly three quarters of this requested increase is for adjustments to our base. These cover, for example, increases in the rent the Center is charged by the General Services Administration for existing office space (up $324,000 or 78.3 percent in fiscal 85), increases in Federal Telecommunications user fees, the cost-of-living pay increase for all federal employees, and the Center's contribution to Social Security as required by the Social Security Amendments of 1983. As you know, these are costs over which the Center has virtually no control. The Center has again attempted, I believe with considerable success, to hold down costs while at the same time fulfilling our mandate to provide the federal courts with research, development, and continuing education services.

I believe our request for a $381,000 programmatic increase is necessary to fulfill the Center's statutory obligations. In creating the Center, Congress directed the Center to "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States." That was in 1967. In that year filings in the United States District Courts numbered 101,459. Today they are in excess of a quarter million per year, 266,440 to be exact. The point is not that the number of filings has much more than doubled. It is rather that with this volume of cases, many of a high order of complexity, modern office automation and case management techniques must be brought to bear if we are to succeed in maintaining our present levels of service by the judiciary.

It should also be noted that in the last five years alone there has been an increase in case filings of over 60 percent and there is no reason to believe that this trend will be reversed, even though the Chief Justice and the Center have strongly encouraged alternative means of dispute resolution.

On the appellate level the comparisons are even more striking. In 1967, the total number of filings in the courts of appeals was 7,903. In 1983 it was 29,630, exclusive of the United States Court of Appeals for the Federal Circuit. The number has more than tripled. Again, over the last five years the increase in filings was 56.6 percent and the trend can be expected to continue. If we talk of terminations per panel, each panel composed of three judges, we see 651 appeals terminated per panel this past year alone. Congress was prescient in seeing the need for development of automated data support. The continuation of such support is today more urgent than ever.

The Center has, over the years, reported regularly to the Congress on the cost-effectiveness of the various systems it has developed and on the receptivity accorded those systems in the courts. I shall not rehearse the data here. However, it does bear mention that as of August 1983, over 81 percent of the federal court's caseload is supported in some fashion by Center-developed computer applications. This is an increase of 11 percent over 1982. In addition, eight bankruptcy courts have asked for and are using the Courtran system to support the management of their increasing caseload.

What was adequate in past years, however, cannot suffice for tomorrow. Simply put, the hardware we have been using is very fast approaching the end of its useful life. The details are provided below, but, in our view, it is essential that the Center move quickly to acquire and install computers to replace the old centralized computers serving the nationwide federal courts. These centralized computers are both outdated and exceedingly costly to maintain. It is worthy of note that the Grace Commission found the government's general use of old computer equipment extremely inefficient and the report observed that immediate replacement would result in substantial savings and productivity. The Commission noted that most government computers are 6.7 years old, nearly double the age of computers in the private sector. The centralized computers supporting the judiciary are 7-9 years old, and we estimate that they will not be able to provide useful service after 1987.

Particularly in response to this problem of obsolete equipment, the Center in 1983, with the approval of our Board and the full participation of the Administrative Office, prepared a five-year plan for the replacement of old computers, the enhancement and conversion of computer systems available to the federal courts, and the development of automated systems for additional courts that wish to use them.

We request $381,000 for the lease of computer equipment to support development and testing of case management applications in three pilot district courts and five pilot bankruptcy courts. These installations are described in the five-year plan. The goals of this plan reflect the Center's past success in using computers to improve court administration in a cost-effective way, as well as the tested methods by which the Center has provided computer technology to federal courts. The pilot projects for which we are requesting assistance respond to the growing need for improved case and court management in the larger district courts and the bankruptcy system as a whole.

The District Court Automation Project will provide the larger metropolitan district courts with modern management tools to allow them to manage their dockets more effectively. In the past year, the Center has selected the three pilot project courts and with the full participation and guidance of court personnel, we are now in the process of developing the necessary software.

Additionally, the current draft of the five-year plan calls for the Center to proceed with the Bankruptcy Court Automation Project. As you may know, bankruptcy courts have been faced with a rapidly increasing number of new filings in the past two years. The Center will help the bankruptcy courts to define the functions to be automated on in-court computers and will develop the software for the systems. In FY 1985 we plan to complete five pilot BANCAP installations.

There are good economic reasons for proceeding with the Center's program for automated court and case management as well as for the completion of the specific efforts described in this statement. Most important, however, the court system will be better able to get on with its chief purpose--the just, speedy and inexpensive determination of every action on the civil side, the meting out of justice, fairly and speedily on the criminal side.

INTRODUCTION OF ASSOCIATES

Senator RUDMAN. Judge Clark, we welcome you back to the subcommittee. Please introduce those at the table. Your entire statement will be incorporated in the record as if read. You are free to summarize.

Judge CLARK. Thank you, Senator. I appreciate that.

To my right is Judge James Harvey from the Eastern District of Michigan, who was a Member of the Congress in the House of Representatives. On my left is Mr. William Foley, who is the Director of the Administrative Office.

I would like to ask you to include in the record the statement we have prepared, as well as the adjustments to that statement, which have been filed with the committee staff without the necessity of their being read at this time.

Senator RUDMAN. They will all be included within the record, without objection.

Judge CLARK. Thank you, sir.

[The information follows:]

PREPARED STATEMENT OF JUDGE CHARLES CLARK

ON BEHALF OF THE

BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES

CHARLES CLARK, CHAIRMAN
CHIEF JUDGE, UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

SOLOMON BLATT, JR.
UNITED STATES DISTRICT JUDGE, DISTRICT OF SOUTH CAROLINA

JAMES HARVEY
UNITED STATES DISTRICT JUDGE, EASTERN DISTRICT OF MICHIGAN

WILLIAM L. HUNGATE
UNITED STATES DISTRICT JUDGE, EASTERN DISTRICT OF MISSOURI

RALPH H. KELLEY
UNITED STATES BANKRUPTCY JUDGE, EASTERN DISTRICT OF TENNESSEE

THOMAS J. MESKILL
UNITED STATES CIRCUIT JUDGE, SECOND CIRCUIT

ROBERT F. PECKHAM
CHIEF JUDGE, NORTHERN DISTRICT OF CALIFORNIA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO ONCE AGAIN PRESENT TO YOU THE BUDGET ESTIMATES FOR THE OPERATION OF THE UNITED STATES COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS FOR FISCAL YEAR 1985.

JUDGE JAMES HARVEY OF THE EASTERN DISTRICT OF MICHIGAN, A MEMBER OF THE BUDGET COMMITTEE FOR THE LAST FIVE YEARS, APPEARS WITH ME TODAY.

MR. WILLIAM E. FOLEY, DIRECTOR OF THE ADMINISTRATIVE OFFICE, AND MEMBERS OF HIS STAFF WILL ALSO ASSIST ME IN THE PRESENTATION. WE SHALL

ATTEMPT TO ANSWER ANY QUESTIONS YOU MAY HAVE AND WILL PROVIDE ANY ADDITIONAL MATERIAL YOU MAY REQUIRE.

MR. CHAIRMAN, I WOULD LIKE TO ASSURE YOU THAT, AS IN PREVIOUS YEARS, OUR BUDGET REQUESTS FOR 1985 REPRESENT THE SMALLEST INCREASES POSSIBLE CONSISTENT WITH THE EVER GROWING WORKLOAD OF THE COURTS. THE BUDGET REQUIREMENTS FOR THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS TOTAL $955,635,000, $106 MILLION AND 1,181 POSITIONS OVER FISCAL YEAR 1984. APPROXIMATELY ONE-HALF OF THE INCREASE IN FUNDING IS FOR THE COST OF MAINTAINING THE CURRENT LEVEL OF SERVICES. THE REMAINING AMOUNT AND THE ADDITIONAL POSITIONS ARE REQUESTED FOR PROGRAM CHANGES WHICH ARE PRINCIPALLY DUE TO CONTINUED INCREASES IN CASE FILINGS AND THE IMPACT OF RECENT LEGISLATION ON THE WORKLOAD OF THE COURTS.

INCREASED CASELOAD

INCREASES IN THE JUDICIARY CASELOADS ARE SHOWN ON THE FIVE-YEAR TABLE AT ATTACHMENT 1. FROM FISCAL YEAR 1978 THROUGH FISCAL YEAR 1983, THE COMBINED TOTAL OF CIVIL AND CRIMINAL CASE FILINGS INCREASED BY OVER 111,000 (64 PERCENT) AND APPEALS BY 11,000 (58 PERCENT). BANKRUPTCY FILINGS INCREASED BY 160,000 PETITIONS (79 PERCENT). THE MAGISTRATES' WORKLOAD ALSO INCREASED BECAUSE OF ADDITIONAL DUTIES DELEGATED TO THEM BY THE JUDGES OF THE DISTRICT COURTS. THE WORKLOAD OF THE PROBATION OFFICERS HAS DECLINED SOMEWHAT IN THAT THE NUMBER OF PERSONS UNDER SUPERVISION IS 10 PERCENT LOWER WHILE THE NUMBER OF PRESENTENCE INVESTIGATIONS ARE THE SAME. DURING THIS SAME PERIOD, THE STAFFING OF THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS WAS INCREASED ONLY 29 PERCENT, FROM 11,101 TO 14,266 POSITIONS.

AUTOMATION IN THE COURTS

IN ORDER TO HANDLE THE INCREASED WORKLOAD AND CONTINUE TO

IMPROVE SERVICES TO THE BAR AND THE LITIGANTS, THE JUDICIARY HAS BEEN RAPIDLY EXPANDING ITS USE OF AUTOMATION. IN FACT, AUTOMATION IN THE FEDERAL COURTS HAS REACHED AN IMPORTANT STAGE IN ITS GROWTH. THE MAIN COMPUTERS LOCATED AT THE ADMINISTRATIVE OFFICE HAVE SURPASSED THE USEFUL LIFE EXPECTANCY OF SIMILAR SYSTEMS. MUCH OF THE HARDWARE THAT NOW SUPPORTS CASE MANAGEMENT AND ADMINISTRATIVE SYSTEMS HAS BEEN USED ON A DAILY BASIS BY THE NATIONWIDE FEDERAL COURTS SINCE 1977. IN ORDER TO CONTINUE THE SERVICES CURRENTLY PROVIDED, TO ENHANCE THE FUNCTIONS OF THE SYSTEMS NOW AVAILABLE, AND TO EXTEND AUTOMATED SERVICES TO ADDITIONAL COURTS, THE MAIN COMPUTERS ARE SCHEDULED TO BE PHASED OUT AND TOTALLY REPLACED BY THE END OF FISCAL YEAR 1987. IT IS HIGHLY DESIRABLE THAT THE NEXT GENERATION OF AUTOMATED SYSTEMS GROW OUT OF A STRONG BOND OF COOPERATION BETWEEN JUDGES, COURT STAFF, THE FEDERAL JUDICIAL CENTER, AND THE ADMINISTRATIVE OFFICE. THEREFORE, THE DIRECTORS OF THE FEDERAL JUDICIAL CENTER AND THE ADMINISTRATIVE OFFICE HAVE DEVELOPED A FIVE-YEAR PLAN GOVERNING THE CONTINUED AUTOMATION IN THE COURTS WHICH IS CURRENTLY UNDER STUDY BY A COMMITTEE OF THE JUDICIAL CONFERENCE.

ASSUMING THE AVAILABILITY OF REASONABLE FINANCIAL RESOURCES BETWEEN FISCAL YEARS 1984 AND 1988, WE PLAN TO INSTALL COMPLETE CASE MANAGEMENT AND ADMINISTRATIVE SUPPORT SYSTEMS IN ALL THE COURTS OF APPEALS AND ALL LARGE DISTRICT COURTS DESIRING THEM. CASE MANAGEMENT INCLUDES SUCH SYSTEM APPLICATIONS AS CALENDARING, ELECTRONIC DOCKETING, STATISTICAL REPORTING, MANAGEMENT REPORTS, AND PARTY INDEXING. ADMINISTRATIVE APPLICATIONS INCLUDE ATTORNEY ADMISSIONS, FINANCIAL MANAGEMENT, INVENTORY, JURY MANAGEMENT IN DISTRICT COURTS, AND PERSONNEL MANAGEMENT. THE FIVE-YEAR PLAN ALSO CALLS FOR CASE MANAGEMENT FUNCTIONS TO BE INTEGRATED WITH WORD PROCESSING AND ELECTRONIC MAIL FUNCTIONS LOCATED IN JUDGES' CHAMBERS. IN ADDITION, CASE MANAGEMENT AND ADMINISTRATIVE SYSTEMS WILL, IN PART OR IN THEIR ENTIRETY, BE MADE AVAILABLE TO SMALLER DISTRICT COURTS WHICH ELECT TO PARTICIPATE. LARGE BANKRUPTCY COURTS WILL HAVE AVAILABLE A CENTRAL SYSTEM FOR NOTICE PRODUCTION, WHILE OTHERS WILL BE OFFERED USE OF COMPUTERS LOCATED IN THE BANKRUPTCY COURTS TO INCREASE THEIR CAPACITY FOR NOTICE PRODUCTION. STILL OTHER BANKRUPTCY COURTS WILL OPT TO CONTRACT PRIVATELY FOR THE NOTICING SERVICE. FINALLY, 30 PROBATION OFFICES WILL RECEIVE SYSTEMS THAT WILL AUTOMATE THE COLLECTION OF DATA THEREBY FACILITATING THE SUBMISSION OF INFORMATION TO A NATIONAL SENTENCING AND SUPERVISION DATA BASE. THE 1985 FUNDING REQUIREMENTS TO SUPPORT THE OPERATION OF THESE AUTOMATED SYSTEMS TOTAL $13,709,000, AN INCREASE OF $2,462,000 OVER 1984. THE PROJECTED COST OF THESE PROGRAMS IS ESTIMATED TO BE $65,694,000.

THE FEDERAL JUDICIAL CENTER AND THE ADMINISTRATIVE OFFICE WILL WORK CLOSELY WITH THE COURTS AND COMMITTEES OF COURT PERSONNEL TO DESIGN AND MAINTAIN EACH OF THESE SYSTEMS. ATTACHMENT 2 DETAILS THE AUTOMATION COSTS FOR THESE PROGRAMS.

A REPROGRAMMING ACTION

ANOTHER FORM OF AUTOMATION IN THE COURTS, BUT NOT A PART OF THE FIVE-YEAR PLAN, IS THE ELECTRONIC SOUND RECORDING OF COURT PROCEEDINGS BEFORE JUDGES WHO VOLUNTARILY ELECT THAT METHOD. AS YOU KNOW, THIS PROGRAM WENT INTO EFFECT ON JANUARY 1, 1984 AS A RESULT OF BOTH CONGRESSIONAL AND JUDICIAL CONFERENCE ACTION. IN FISCAL YEAR 1984 YOUR COMMITTEE AUTHORIZED FUNDS FOR THE PURCHASE OF 50 UNITS OF SOUND RECORDING EQUIPMENT FOR THE DISTRICT COURTS. HOWEVER, NO PROVISION HAS BEEN MADE FOR COURT RECORDER/OPERATOR PERSONNEL TO STAFF ANY OF THE INSTALLATIONS. SINCE THE REDUCTION IN OFFICIAL COURT REPORTER PERSONNEL IS TO BE ACCOMPLISHED THROUGH ATTRITION AND NO APPRECIABLE SAVINGS ARE EXPECTED UNTIL 1986, IT WILL BE NECESSARY TO HIRE THE MACHINE OPERATOR STAFF ON A TEMPORARY BASIS THROUGH THE USE OF FUNDS WHICH WOULD OTHERWISE BE AVAILABLE FROM LAPSES IN FILLING CURRENTLY AUTHORIZED POSITIONS IN 1984. OUR 1985 BUDGET REQUEST WAS BASED ON THE ASSUMPTION THAT 30 COURT REPORTER

POSITIONS WILL BECOME VACANT, FOR AN AVERAGE OF SIX MONTHS, AND WILL BE REPLACED BY 30 COURT RECORDER/OPERATORS FOR A PERIOD OF NINE MONTHS, RESULTING IN NET SAVINGS OF $120,000. ON AN ANNUAL BASIS, THESE SAVINGS COULD AMOUNT TO $500,000. SINCE IT WILL BE NECESSARY TO HIRE THE TEMPORARY MACHINE OPERATORS FROM AVAILABLE FUNDS DURING 1984, A REPROGRAMMING ACTION IS BEING PREPARED FOR YOUR COMMITTEE'S CONSIDERATION.

APPROPRIATIONS REQUESTED FOR FISCAL YEAR 1985

OUR REQUEST OF $955,635,000 FOR FISCAL YEAR 1985 REPRESENTS AN INCREASE OF $105,586,000 OVER THE AMOUNTS APPROVED FOR FISCAL YEAR 1984 AFTER TAKING INTO CONSIDERATION THE PROPOSED SUPPLEMENTALS FOR 1984. THIS INCREASE CONSISTS OF $47,489,000 FOR ADJUSTMENTS TO BASE AND $58,097,000 FOR PROGRAM CHANGES. IF WE EXCLUDE THE COST OF THE ADJUSTMENTS TO BASE AND BUILT-IN CHANGES, WHICH ARE OF AN UNCONTROLLABLE NATURE, OUR ADDITIONAL PROGRAM REQUIREMENTS WOULD REPRESENT A 6.8 PERCENT INCREASE IN THE BUDGET. THESE PROGRAM REQUIREMENTS CONSIST PRIMARILY OF 1,181 POSITIONS, OF WHICH 1,045 POSITIONS ARE REQUESTED UNDER THE HEADING "SALARIES OF SUPPORTING PERSONNEL," 133 POSITIONS UNDER THE HEADING "BANKRUPTCY COURTS, SALARIES AND EXPENSES," AND THREE POSITIONS UNDER THE HEADING "DEFENDER SERVICES." THESE POSITIONS REPRESENT A 7.8 PERCENT INCREASE IN THE TOTAL PERSONNEL REQUIREMENTS OF THE JUDICIARY OVER FISCAL YEAR 1984.

CASELOAD

DESPITE AN INCREASE IN TERMINATIONS, THE PENDING CASELOAD IN THE COURTS OF APPEALS REACHED A RECORD HIGH OF 22,496. THE ADDITIONAL JUDGESHIPS PROVIDED IN 1978 HAVE INCREASED THE RATE OF DISPOSITIONS SIGNIFICANTLY. THE NUMBER OF TERMINATIONS IN FISCAL YEAR 1983

INCREASED BY 5.4 PERCENT OVER THE NUMBER OF TERMINATIONS IN 1982. HOWEVER, EVEN THIS INCREASE IN TERMINATIONS HAS NOT KEPT PACE WITH THE GROWTH IN NEW FILINGS WHICH INCREASED 9.5 PERCENT OVER 1982. THE JUDGES IN THE COURTS OF APPEALS WILL CONTINUE TO CARRY A VERY HEAVY CASELOAD BECAUSE OF THE GROWING VOLUME OF APPEALS.

WITH REGARD TO THE DISTRICT COURTS, THE INCREASE IN CRIMINAL CASES EXPERIENCED IN 1982 CONTINUED IN 1983. CRIMINAL FILINGS ROSE FROM 33,097 IN 1982 TO 35,390 IN 1983, AN INCREASE OF 6.9 PERCENT. THE TREND IN CIVIL FILINGS CONTINUES TO MOVE UPWARD WITHOUT PAUSE; MORE THAN A QUARTER OF A MILLION CASES WERE FILED IN FISCAL YEAR 1983. OVER THE PAST FIVE YEARS, THE NUMBER OF CIVIL CASES FILED ANNUALLY HAS INCREASED BY 78.5 PERCENT. THE 1983 INCREASE ALONE WAS 18.0 PERCENT OVER 1982. IT IS TO BE NOTED THAT, NOTWITHSTANDING AN 11.2 PERCENT INCREASE IN THE RATE OF TERMINATIONS ACHIEVED IN 1983 (253,444) OVER 1982 (227,946), THE GROWTH IN CIVIL AND CRIMINAL FILINGS OVER THE PAST FIVE YEARS HAS CAUSED THE PENDING CASELOAD TO GROW BY 42.3 PERCENT, TO A NEW RECORD OF 262,325.

FORTUNATELY, FOR THE FIRST TIME SINCE PASSAGE OF THE BANKRUPTCY REFORM ACT OF 1978, BANKRUPTCY PETITIONS HAVE DECLINED, FROM 374,235 IN 1982 TO 362,320 IN 1983. THIS REPRESENTS A DECREASE OF 3.3 PERCENT OVER LAST YEAR, BUT IS STILL 78.9 PERCENT GREATER THAN 1978. DESPITE AN INCREASE IN TERMINATIONS OF 47.9 PERCENT SINCE 1978, THE PENDING CASELOAD OF BANKRUPTCY PETITIONS ROSE TO A RECORD HIGH OF 584,796, AN INCREASE OF 148.0 PERCENT. I SHOULD NOTE THAT BANKRUPTCY ESTATE FILINGS AS PRESENTED IN OUR BUDGET JUSTIFICATIONS COUNT NOT ONLY THE BASIC PETITIONS BUT ALSO THE NUMBER OF TIMES A SPOUSE JOINED IN THE FILING, WHICH WAS FACILITATED BY THE BANKRUPTCY REFORM ACT. THE JUDICIAL CONFERENCE BANKRUPTCY COMMITTEE THIS JANUARY DETERMINED THAT DATA ON PETITIONS AS PRESENTED HERE, RATHER THAN JOINT HUSBAND-WIFE PETITIONS OR ESTATES AS PRESENTED IN THE JUSTIFICATIONS, WOULD BETTER REFLECT ACTUAL WORKLOAD.

SALARIES OF JUDGES

MR. CHAIRMAN, OUR REQUEST FOR THIS APPROPRIATION EACH YEAR IS BASED ON ANTICIPATED VACANCIES AND THE NUMBER OF JUDGES THAT WILL TAKE SENIOR STATUS. OUR REQUEST FOR FISCAL YEAR 1985 REPRESENTS AN INCREASE OF $1,330,000 OVER 1984 AFTER TAKING INTO CONSIDERATION THE PROPOSED SUPPLEMENTAL FOR PAY COSTS AND OTHER BENEFITS OF $3,370,000. PROVISION HAS BEEN MADE IN THIS BUDGET FOR A 3.5 PERCENT INCREASE IN JUDGES SALARIES.

WE ESTIMATE THAT IN FISCAL YEAR 1985 THERE WILL BE, ON THE AVERAGE, 25 JUDGESHIP VACANCIES. IN ADDITION, PROVISION HAS BEEN MADE FOR AN AVERAGE NET INCREASE OF 6 JUDGES IN SENIOR STATUS IN FISCAL YEAR 1985. BY 1985, 88 JUDGES WILL BE ELIGIBLE TO TAKE SENIOR STATUS.

SALARIES OF SUPPORTING PERSONNEL

WE HAVE REQUESTED $382,460,000, AN INCREASE OF $40,500,000 OVER 1984 AFTER ADJUSTING THE APPROPRIATIONS FOR PAY COSTS, AND 1,045 SUPPORTING PERSONNEL FOR THE COURTS OF APPEALS AND DISTRICT COURTS. A SUMMARY OF THE ADDITIONAL POSITIONS IS CONTAINED ON PAGE 6.3 OF OUR BUDGET JUSTIFICATION.

A MAJOR PORTION, OR 459, OF THE ADDITIONAL POSITIONS CAN BE ATTRIBUTED TO INCREASED WORKLOAD IN CIRCUIT AND DISTRICT COURT CLERKS' OFFICES, WHILE 330 ADDITIONAL POSITIONS WILL BE REQUIRED TO KEEP UP WITH THE WORKLOAD OF THE PROBATION OFFICES, AND 147 ADDITIONAL POSITIONS FOR PRETRIAL SERVICES. THESE ADDED PERSONNEL ARE REQUIRED BASED ON PROJECTED WORKLOAD AND STAFFING FORMULAS. LAST YEAR YOUR COMMITTEE REDUCED OUR REQUEST FOR PRETRIAL SERVICES FROM 313 TO 200 POSITIONS AND RECOMMENDED THAT THE PROBATION SERVICE SHOULD

ABSORB AS MUCH OF THE PRETRIAL SERVICES FUNCTION WITH CURRENT PERSONNEL AS IS REASONABLY POSSIBLE. DURING 1984 IT WILL BE POSSIBLE TO ABSORB SOME OF THE PRETRIAL SERVICES FUNCTION IN THOSE DISTRICTS WHICH ARE OVERSTAFFED BASED ON WORKLOAD PROJECTIONS AND APPLICATION OF THE WORK MEASUREMENT FORMULA. THIS OVERSTAFFING, HOWEVER, IS NOT EXPECTED TO CONTINUE DURING FISCAL YEAR 1985 AND WE HAVE THEREFORE REQUESTED FUNDING FOR THE FULL COMPLEMENT OF 473 PRETRIAL SERVICES POSITIONS.

DEPUTY CLERKS

WE ARE REQUESTING AN ADDITIONAL 428 DEPUTY CLERK POSITIONS FOR THE DISTRICT COURTS, BASED ON A PROJECTED 4.2 PERCENT INCREASE IN CIVIL AND CRIMINAL CASE FILINGS IN 1985 AND SUPPORTED BY THE MOST RECENT WORK MEASUREMENT STUDY OF THE DISTRICT COURT CLERKS' OFFICES. WE FEEL THAT THIS IS A CONSERVATIVE ESTIMATE DUE TO THE FACT THAT CIVIL AND CRIMINAL FILINGS IN 1983 INCREASED 16.5 PERCENT ABOVE THE 1982 LEVEL. OUR LATEST PROJECTIONS FOR 1984 ARE 24,300 CASES HIGHER THAN THE ESTIMATE CONTAINED IN OUR 1984 BUDGET REQUEST, OF WHICH 18,400 ARE SOCIAL SECURITY RELATED. DURING 1983 THERE WAS A DRAMATIC 124 PERCENT INCREASE IN DISABILITY INSURANCE CASES.

AN ADDITIONAL 31 POSITIONS ARE REQUESTED FOR THE COURTS OF APPEALS CLERKS' OFFICES BASED ON THE PROJECTED GROWTH IN FILINGS, FROM 32,000 IN 1984 TO 34,000 IN 1985, AND THE NEED TO REDUCE THE NUMBER OF CASES PER DEPUTY CLERK TO A FIGURE MORE IN LINE WITH THE 75 FILINGS PER DEPUTY APPROVED BY THE JUDICIAL CONFERENCE. THIS REQUEST WILL RESULT IN AN OVERALL RATIO OF 78 APPEAL FILINGS PER DEPUTY CLERK.

PRETRIAL SERVICES

THE PRETRIAL SERVICES ACT OF 1982, PUBLIC LAW 97-267, WHICH WAS

APPROVED SEPTEMBER 29, 1982, PROVIDES FOR THE ESTABLISHMENT OF PRETRIAL SERVICES THROUGHOUT THE DISTRICT COURTS, AND BECOMES EFFECTIVE MARCH 28, 1984. THE PROGRAM INCLUDES A PRELIMINARY BACKGROUND INVESTIGATION OF ALL DEFENDANTS, EXCEPT THOSE CHARGED WITH PETTY OFFENSES, AND THE PROVISION OF SUPERVISION AND SUPPORTING SERVICES WHERE REQUIRED AS CONDITIONS OF RELEASE.

THESE FUNCTIONS WILL BE PERFORMED THROUGH EXISTING PROBATION OFFICES AND THROUGH OFFICES ESTABLISHED SPECIFICALLY FOR PRETRIAL SERVICES. BASED ON THE APPLICATION OF WORK MEASUREMENT FACTORS TO THE PROJECTED NUMBER OF CRIMINAL DEFENDANTS, WE HAVE SUBMITTED A REQUEST FOR 147 ADDITIONAL PRETRIAL SERVICES POSITIONS WHICH INCLUDES THE 113 POSITIONS DENIED BY THE COMMITTEE LAST YEAR. THERE ARE 326 POSITIONS CURRENTLY AUTHORIZED OF WHICH 200 WERE APPROVED LAST YEAR. THESE POSITIONS WERE APPROVED WITHOUT ANY RESTRICTION AS TO HOW THEY WOULD BE ALLOCATED AND PRESUMABLY ARE AVAILABLE FOR EITHER SEPARATE PRETRIAL SERVICES AGENCIES OR PROBATION OFFICES WHICH PERFORM THE PRETRIAL SERVICES FUNCTION.

THE JUDICIAL CONFERENCE COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL PROBATION SYSTEM AT ITS MEETING IN JANUARY REVIEWED 92 REPORTS OF ON-SITE VISITS IN EACH JUDICIAL DISTRICT. BASED ON ITS REVIEW OF THESE REPORTS, THE PROBATION COMMITTEE IDENTIFIED THREE GENERAL CATEGORIES OF DISTRICTS: (1) SMALL DISTRICTS WHICH DO NOT JUSTIFY A SEPARATE PRETRIAL SERVICES AGENCY; (2) LARGE DISTRICTS IN WHICH A SEPARATE AGENCY IS APPROPRIATE; AND (3) DISTRICTS WHERE ONE FORM OF ORGANIZATION DOES NOT PREVAIL OVER THE OTHER. IT SHOULD BE NOTED THAT THE COMMITTEE CAN ONLY MAKE A RECOMMENDATION TO EACH DISTRICT AND THAT, UNDER THE STATUTE, THE FINAL DECISION MUST BE MADE BY THE DISTRICT COURT WITH THE CONCURRENCE OF THE CIRCUIT COUNCIL.

THE FIRST CATEGORY IS WHERE THE WORKLOAD IS SO SMALL AS TO JUSTIFY ONLY A MODEST INCREASE IN STAFF AND, BECAUSE OF THE STAFF'S GEOGRAPHICAL DISPERSION, A SEPARATE AGENCY WOULD NOT BE COST

EFFECTIVE. THERE WERE 64 SUCH DISTRICTS, AND THE COMMITTEE WILL RECOMMEND TO THESE DISTRICTS THAT THE PRETRIAL SERVICES FUNCTION BE PERFORMED BY THE PROBATION OFFICE WITH EXISTING OR FROM ONE TO FOUR ADDITIONAL POSITIONS. THERE WERE 16 DISTRICTS IN WHICH A SEPARATE PRETRIAL SERVICES AGENCY ORGANIZED UNDER 18 U.S.C. 3152(b) APPEARS IN ORDER. THESE ARE THE LARGER DISTRICTS AND STAFF SIZES WOULD RANGE FROM SIX TO 24 POSITIONS. FINALLY, THERE ARE 12 DISTRICTS WHERE A CLEAR-CUT RECOMMENDATION FOR ONE FORM OF ORGANIZATION DOES NOT PREVAIL OVER THE OTHER.

PROBATION SERVICE

WITH RESPECT TO THE REMAINING FUNCTIONS OF THE PROBATION SERVICE, WE ARE REQUESTING 330 ADDITIONAL POSITIONS, AN 11.5 PERCENT INCREASE, BASED ON THE WORK MEASUREMENT FORMULA APPROVED BY THE JUDICIAL CONFERENCE AND WORKLOAD PROJECTIONS FOR 1985. PERSONS UNDER SUPERVISION BY PROBATION OFFICERS ARE EXPECTED TO INCREASE BY 4.1 PERCENT IN THE CURRENT YEAR OVER WHAT WAS PROJECTED IN OUR 1984 BUDGET REQUEST. THIS TREND IS PROJECTED TO CONTINUE WITH AN ADDITIONAL INCREASE OF 6.3 PERCENT IN 1985. SIMILARLY, PRE- AND POST-SENTENCE REPORTS IN THE CURRENT YEAR ARE 7.5 PERCENT OVER EARLIER ESTIMATES. PRE- AND POST-SENTENCE REPORTS FOR 1985 ARE ESTIMATED TO INCREASE 6.1 PERCENT OVER 1984.

MAGISTRATES

OUR REQUEST ALSO INCLUDES 15 ADDITIONAL FULL-TIME MAGISTRATES AND SUPPORTING STAFF AND 20 ADDITIONAL LEGAL ASSISTANTS. THE USE OF MAGISTRATES TO RELIEVE CASELOAD PRESSURES IN THE DISTRICT COURTS HAS BEEN SUCCESSFUL AND IS CONTINUING TO EXPAND THROUGHOUT THE COUNTRY. FIVE OF THE FULL-TIME MAGISTRATE POSITIONS AND FOUR LEGAL ASSISTANT POSITIONS WERE RECOMMENDED FOR APPROVAL BY THE

MAGISTRATES COMMITTEE IN DECEMBER 1983 AND HAVE BEEN APPROVED BY THE JUDICIAL CONFERENCE.

NATIONAL COURT LIBRARY SYSTEM

THE JUDICIARY IS CONTINUING TO PHASE IN THE EXPANSION OF THE NATIONAL COURT LIBRARY SYSTEM CONSISTENT WITH THE RECOMMENDATIONS OF YOUR COMMITTEE. IN FISCAL YEAR 1985, THE NATIONAL COURT LIBRARY SYSTEM WILL HAVE COMPLETED FOUR YEARS OF OPERATION. WE EXPECT TO COMPLETE THE STAFFING OF THIS SYSTEM BY 1988 WITH NEARLY EQUAL INCREMENTS OF PERSONNEL EACH YEAR. OUR REQUEST FOR FISCAL YEAR 1985 IS FOR 19 POSITIONS.

IN THE PAST THREE FISCAL YEARS, THE ADMINISTRATIVE OFFICE STAFF WORKING CLOSELY WITH THE CIRCUIT LIBRARIANS HAVE MADE SUBSTANTIAL HEADWAY IN REORGANIZING THE DELIVERY OF LIBRARY AND INFORMATION SERVICES TO THE JUDICIARY. A BY-PRODUCT OF THE CREATION OF A UNIFIED LIBRARY SERVICE HAS BEEN THE DEVELOPMENT OF THE MANAGEMENT OVERSIGHT OF THE CHAMBERS LAWBOOK COLLECTIONS AND INTERACTION WITH JUDGES IN ATTEMPTING TO ELIMINATE THE DUPLICATION OF EXTENSIVE INDIVIDUAL LAWBOOK COLLECTIONS.

DEFENDER SERVICES

OUR REQUEST FOR FISCAL YEAR 1985 IN THIS APPROPRIATION REPRESENTS AN INCREASE OF $1,500,000 OVER 1984 AFTER TAKING INTO ACCOUNT THE PROPOSED SUPPLEMENTALS OF $5,215,000 FOR FISCAL YEAR 1984. AS YOU KNOW, THIS "NO YEAR" APPROPRIATION IS SUBJECT TO LITTLE CONTROL SINCE OUR REQUIREMENTS ARE BASED ON THE NUMBER OF PERSONS WHO MUST BE REPRESENTED UNDER THE CRIMINAL JUSTICE ACT. REPRESENTATION UNDER THE ACT CONTINUES TO INCREASE MAINLY DUE TO INCREASES IN CRIMINAL FILINGS. THE INCREASINGLY COMPLEX NATURE OF THE CASES IN SUCH AREAS

AS FRAUD, EMBEZZLEMENT, AND HIGH TECHNOLOGY ALSO CONTRIBUTES TO INCREASES IN THE AVERAGE CASE COST.

DUE TO THE FACT THAT THE PANEL ATTORNEY COMPENSATION RATES HAVE NOT BEEN RAISED SINCE 1970, COURT-APPOINTED COUNSEL ARE FINDING IT AN INCREASINGLY GREATER ECONOMIC HARDSHIP TO BECOME INVOLVED IN PROTRACTED CASES. THIS SITUATION HAS A TENDENCY TO PLACE A GREATER DEMAND ON THE SERVICES PROVIDED BY FEDERAL DEFENDERS. AS A RESULT, THREE DEFENDER POSITIONS ARE BEING REQUESTED IN 1985 IN ADDITION TO THE 23 POSITIONS IN OUR 1984 SUPPLEMENTAL REQUEST. OUR INCREASE IN FUNDING REQUESTED FOR FEDERAL DEFENDERS IS ALSO BASED ON INCREASED COSTS DUE TO INFLATION, PARTICULARLY IN THE AREAS OF TELEPHONE CHARGES, OFFICE SPACE RENTAL, AND LAWBOOKS.

MR. CHAIRMAN, THERE IS A BILL, H.R. 4307, CURRENTLY BEFORE THE HOUSE JUDICIARY COMMITTEE WHICH, IF ENACTED, WOULD RAISE THE HOURLY PANEL ATTORNEY RATES FROM $30 FOR IN-COURT TIME AND $20 FOR OUT-OF-COURT TIME TO A FLAT RATE OF $50. THE BILL ALSO CONTAINS A PROVISION WHICH WOULD PERMIT THE JUDICIAL CONFERENCE OF THE UNITED STATES TO INCREASE THE RATE IN A PARTICULAR DISTRICT OR CIRCUIT UP TO $75. WE ESTIMATE THAT THIS LEGISLATION WILL COST AN ADDITIONAL $19.8 MILLION OVER THE AMOUNT REQUESTED IN 1985 FOR PANEL ATTORNEYS. WE WILL AMEND OUR 1985 REQUEST SHOULD THE BILL PASS CONGRESS THIS YEAR. THE JUDICIAL CONFERENCE SUPPORTS AN INCREASE IN THE PANEL ATTORNEY RATES AND CONSIDERS THE COMPENSATION PLAN IN H.R. 4307 FULLY ACCEPTABLE.

FEES OF JURORS AND COMMISSIONERS

WE ARE NOT REQUESTING AN INCREASE IN BUDGET AUTHORITY IN THIS APPROPRIATION OVER THE AMOUNT AVAILABLE IN 1984. ALTHOUGH WE ARE PROJECTING INCREASES OF 2.2 PERCENT IN PETIT JUROR ACTIVITY AND 4.3 PERCENT IN GRAND JUROR ACTIVITY IN 1985, AN UNOBLIGATED BALANCE OF

$1,100,000 AT THE END OF 1984 WILL BE AVAILABLE TO ACCOMMODATE THE EXPENDITURES ASSOCIATED WITH THE INCREASES IN JUROR ACTIVITY. THE ESTIMATES FOR FISCAL YEAR 1985 DO NOT PROVIDE FOR ANY INCREASE IN THE MILEAGE OR DAILY COMPENSATION RATES PAYABLE TO JURORS.

EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS

EXCLUDING THE ADJUSTMENTS TO THE BASE APPROPRIATION FOR UNCONTROLLABLE INFLATIONARY CHANGES ($3,121,000) AND TRANSFERS FROM OTHER APPROPRIATIONS WHICH I DESCRIBE ELSEWHERE ($15,839,000), WE ARE REQUESTING AN INCREASE OF $13,960,000. OF THIS AMOUNT, $5,308,000 REPRESENTS EXPENSES RELATING TO REQUESTS FOR NEW PERSONNEL UNDER THE HEADING "SALARIES OF SUPPORTING PERSONNEL," $2,590,000 IS IN SUPPORT OF THE COURT AUTOMATION PROGRAM, $2,795,000 IS FOR TELEPHONE NETWORK SYSTEMS AS A RESULT OF THE DIVESTITURE OF THE AMERICAN TELEGRAPH AND TELEPHONE COMPANY, AND $1,940,000 IS TO SUPPLEMENT LAWBOOK RESOURCES WHOSE COSTS HAVE ESCALATED BEYOND NORMAL INFLATION LEVELS. THE REMAINING $1,327,000 WILL BE USED TO PROVIDE ADDITIONAL FUNDS FOR ELECTRONIC TYPEWRITER ACQUISITION ($825,000), COURT-ANNEXED ARBITRATION ($400,000), AND $102,000 FOR VIDEO RECORDING EQUIPMENT.

AUTOMATION

DURING FISCAL YEAR 1985, THE SECOND YEAR OF OUR FIVE-YEAR COURT AUTOMATION PROGRAM, TWO NEW PROJECTS WILL BEGIN LIMITED OPERATION. THE LARGE METROPOLITAN COURT AUTOMATION PROJECT (LAMCAP) WILL BE PLACED IN THREE COURTS AND IS INTENDED TO REPLACE THE HARDWARE AND THE PROGRAMS WHICH MAKE UP THE EXISTING COURTRAN SYSTEMS USED BY THE LARGE COURTS. THE NEW SYSTEM ALSO WILL INCLUDE OTHER APPLICATIONS SUCH AS FINANCIAL MANAGEMENT, JURY PROCESSING, AND ATTORNEY ADMISSIONS. THE APPELLATE INFORMATION MANAGEMENT SYSTEM (NEW AIMS) WILL BE TRANSFERRED FROM THE FEDERAL JUDICIAL CENTER TO

THE ADMINISTRATIVE OFFICE FOR PLACEMENT IN THREE APPELLATE COURTS IN FISCAL YEAR 1985. AS IN THE METROPOLITAN COURT AUTOMATION PROJECT, THIS SYSTEM WILL ALSO RELY ON COURT-LOCATED HARDWARE, IN LIEU OF THE CURRENT CENTRALIZED PROGRAM, AND WILL SUPPORT ALL OF THE AUTOMATION NEEDS OF THE COURTS OF APPEALS, INCLUDING INTEGRATED CASE MANAGEMENT AND WORD PROCESSING.

LAWBOOKS

THE COST OF MAINTAINING LEGAL RESEARCH MATERIALS FOR THE JUDICIARY HAS ESCALATED BEYOND NORMAL INFLATION RATES. AN ADDITIONAL $1,000,000 IS REQUIRED FOR LAWBOOK CONTINUATIONS BECAUSE OF THE GROWTH IN THE NUMBER OF COURT OPINIONS REPORTED, RECENT TRENDS IN THE PUBLISHING INDUSTRY TO PRODUCE MORE VOLUMES WITH FEWER PAGES, AND THE HANDLING AND POSTAGE FOR THE ADDITIONAL VOLUMES. THE JUDICIARY HAS BEEN ADVISED THAT A NEW EDITION OF THE FEDERAL PRACTICE DIGEST WILL BE PUBLISHED AT THE RATE OF SEVERAL VOLUMES PER MONTH, OVER A THREE-YEAR PERIOD. WE ARE REQUESTING $940,000 FOR THE 1985 COST OF THIS NEW EDITION.

BANKRUPTCY COURTS, SALARIES AND EXPENSES

MR. CHAIRMAN, WE CANNOT PREDICT HOW CONGRESS WILL RESOLVE THE PRESENT CONSTITUTIONAL DEFECT IN THE PERFORMANCE OF THE BANKRUPTCY FUNCTIONS OF THE FEDERAL JUDICIARY. THE 1985 BUDGET REQUESTS ARE PREDICATED ON THE COSTS OF OPERATING A SYSTEM OF JUDGES' OFFICES AND CLERICAL STAFFS OF THE PRESENT SIZE AND AT BASICALLY THE SAME RATES OF SALARY. THE BUDGET DOES NOT CONTEMPLATE ANY SUBSTANTIAL CHANGES IN SPACE NEEDS.

THE FISCAL YEAR 1985 REQUEST FOR THE BANKRUPTCY COURTS REPRESENTS AN INCREASE OF $12,120,000 OVER THE 1984 APPROPRIATION AFTER

TAKING INTO ACCOUNT THE PROPOSED SUPPLEMENTALS OF $6,945,000 FOR FISCAL YEAR 1984. BECAUSE OF IMPROVED ECONOMIC CONDITIONS, BANKRUPTCY FILINGS UNDER ALL CHAPTERS HAVE FINALLY BEGUN TO DECLINE. OUR LATEST FORECASTS INDICATE NEW FILINGS WILL CONTINUE TO DECREASE GRADUALLY THROUGH THE END OF FISCAL YEAR 1985. DURING THIS PERIOD, INCREASED EMPHASIS WILL BE PLACED ON CLOSING MORE CASES, THUS REDUCING THE SUBSTANTIAL BACKLOG IN PENDING CASES.

SINCE 1982, THE CONGRESS HAS AUTHORIZED AN ADDITIONAL 410 TEMPORARY DEPUTY CLERK POSITIONS TO ASSIST THE BANKRUPTCY COURTS IN PROCESSING AND ADMINISTERING THEIR UNPRECEDENTED CASELOAD. IT WAS NEVER CONTEMPLATED THAT THE POSITIONS WOULD BE FILLED WITH TEMPORARY PERSONNEL FOR SUCH A PROTRACTED PERIOD. BECAUSE OF THE INABILITY TO OFFER TEMPORARY EMPLOYEES STABLE EMPLOYMENT OR OTHER BENEFITS COMPARABLE TO THEIR PERMANENT COUNTERPARTS, THE RETENTION OF TRAINED AND EXPERIENCED PERSONNEL HAS BECOME A SERIOUS PROBLEM. TO ALLEVIATE THE ADVERSE EFFECTS OF HIGH EMPLOYEE TURNOVER ON PRODUCTIVITY, WE ARE REQUESTING AUTHORIZATION AND LIMITED FUNDING TO CONVERT 250 TEMPORARY POSITIONS TO PERMANENT STATUS AND 160 TEMPORARY POSITIONS TO A TEMPORARY INDEFINITE STATUS WHICH WOULD ALLOW THE INCUMBENT TO RECEIVE THE SAME BENEFITS AS A PERMANENT EMPLOYEE.

PROVISION HAS BEEN MADE FOR THE ESTABLISHMENT OF AN ELECTRONIC SOUND RECORDING PROGRAM IN SELECTED BANKRUPTCY COURTS IN 1985 PARALLELING THE DEVELOPMENT OF THIS PROGRAM IN THE DISTRICT COURTS. OUR BUDGET ESTIMATE IS BASED ON THE ASSUMPTION THAT SALARY AND BENEFIT COSTS INCIDENT TO THE 67 ADDITIONAL DEPUTY CLERK POSITIONS REQUESTED WILL BE FUNDED FROM SAVINGS RESULTING FROM REDUCED CONTRACT COURT REPORTER COSTS.

AS YOU KNOW, THE UNITED STATES TRUSTEE PROGRAM EXPIRES ON SEPTEMBER 30, 1984. ITS FUTURE IS NOT KNOWN AT THIS TIME. BECAUSE OF THE NEED TO MAINTAIN CONTINUITY OF THE TRUSTEE FUNCTION RELATIVE TO ITS

NORMAL BANKRUPTCY RESPONSIBILITIES, THE JUDICIARY IS REQUESTING FUNDING FOR AN ADDITIONAL 66 DEPUTY CLERK ESTATE ADMINISTRATOR AND CLERICAL SUPPORT POSITIONS FOR THE 18 PILOT DISTRICTS. SHOULD THE CONGRESS DECIDE TO CONTINUE THE UNITED STATES TRUSTEE PROGRAM, THESE FUNDS WOULD NOT BE NEEDED.

MR. CHAIRMAN, WE ARE ALSO REQUESTING THAT ALL OF THE 2,214 POSITIONS ALLOTTED TO THE BANKRUPTCY CLERKS' OFFICES BE RETAINED. WE KNOW THAT THESE POSITIONS ARE NEEDED. OUR PRESENT JUSTIFICATIONS INVOLVE THE USE OF A WORK MEASUREMENT FORMULA DEVISED IN 1980 TO DETERMINE HOW MANY POSITIONS ARE NEEDED IN THESE OFFICES. AT THE BEGINNING OF THE YEAR, THE ADMINISTRATIVE OFFICE REVIEWED THAT FORMULA AND DETERMINED THAT THE SURVEY ON WHICH IT WAS BASED DID NOT MEASURE THE WORK OF THE ESTATE ADMINISTRATOR. THESE POSITIONS DID NOT EXIST WHEN THE SURVEY WAS CONDUCTED, AND THE FUNCTION WAS NOT BEING PERFORMED. THE SURVEY MEASURED THE ROUTINE CLERICAL WORK. THE FUNCTIONS PERFORMED BY ESTATE ADMINISTRATORS INVOLVE A MUCH HIGHER LEVEL OF RESPONSIBILITY. THEY ARE GENERALLY STAFFED BY LAWYERS. THEY SUPERVISE TRUSTEES AND DEBTORS IN POSSESSION WITH ASSETS OF $300 BILLION.

WHEN THE 125 ESTATE ADMINISTRATOR POSITIONS ARE DEDUCTED FROM THE 2,214 POSITIONS NOW AUTHORIZED, THE REMAINING 2,089 DEPUTY CLERK POSITIONS MUST BE USED TO PERFORM THE ROUTINE FILING AND PROCESSING OF INCOMING WORK AND HANDLE THE BACKLOG WHICH HAS ACCUMULATED DUE TO THE EXTRAORDINARY FILINGS THE PAST SEVERAL YEARS. THE WORK MEASUREMENT FORMULA FOR REGULAR WORK ALONE WOULD REQUIRE ALL BUT 21 OF THESE CLERICAL POSITIONS. WE THINK THAT WE ARE REQUESTING A VERY MODEST MARGIN OF FLEXIBILITY IN LIGHT OF THE FACT THAT MANY OF THE POSITIONS ARE TEMPORARY.

THE WORK MEASUREMENT FORMULA IS BEING UPDATED AND A FINAL REPORT IS EXPECTED THIS YEAR. THE NEW STUDY SHOULD ACCURATELY PREDICT THE STAFFING NEEDS OF THE BANKRUPTCY COURTS.

SERVICES FOR DRUG DEPENDENT OFFENDERS

THE JUDICIARY IS CONTINUING TO PROVIDE SERVICES AND SPECIAL SUPERVISION TO DRUG DEPENDENT OFFENDERS UNDER THE AUTHORITY OF THE APPROPRIATIONS ACT FOR FISCAL YEAR 1984. AN AUTHORIZATION BILL IS PENDING IN THE CONGRESS AND IS EXPECTED TO BE PASSED EARLY THIS YEAR. FOR FISCAL YEAR 1985, IT IS REQUESTED THAT THE AMOUNT REQUIRED TO OPERATE THIS PROGRAM, $5.5 MILLION, BE TRANSFERRED TO THE APPROPRIATION "EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS." THIS WILL CONSOLIDATE IN ONE ACCOUNT THE EXPENSES OF OPERATING THE FEDERAL PROBATION SYSTEM AND THE EXPENSE OF SERVICES TO PERSONS IN THE DRUG AFTERCARE PROGRAM, A PROGRAM ADMINISTERED BY THE PROBATION OFFICES. THE RESULTING CONSOLIDATION OFFERS GREATER EFFICIENCY AND REDUCTION IN PAPERWORK. IT IS INTENDED THAT THE FUNDS SPECIFICALLY AUTHORIZED FOR THIS PROGRAM WILL NOT BE EXCEEDED NOR DIVERTED WITHOUT THE APPROVAL OF YOUR COMMITTEE. AS OF JUNE 1983, A TOTAL OF 4,735 PERSONS WERE RECEIVING TREATMENT. THE ESTIMATE ANTICIPATES 5,300 OFFENDERS IN 1985.

SPACE AND FACILITIES

THE BUDGET ESTIMATE FOR 1985 IS $158,250,000, WHICH REPRESENTS AN OVERALL INCREASE OF $15,626,000 OVER THE AMOUNT APPROPRIATED FOR 1984. WE ARE REQUESTING A TRANSFER OF BUDGET AUTHORITY FOR THE PROCUREMENT, MOVING, AND REPAIR OF FURNITURE AND FURNISHINGS TO THE APPROPRIATIONS FOR "EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS" AND "BANKRUPTCY COURTS, SALARIES AND EXPENSES." IN FISCAL YEARS 1979 AND 1980, YOUR COMMITTEE APPROVED SUCH A TRANSFER FOR THE NATIONAL COURTS, FEDERAL DEFENDER OFFICES, ADMINISTRATIVE OFFICE, AND FEDERAL JUDICIAL CENTER IN ORDER TO ACHIEVE GREATER CONTROL AND IMPROVED MANAGEMENT OVER FURNITURE PURCHASES. WE BELIEVE THIS HAS BEEN ACHIEVED, AND WE NOW REQUEST THAT THE SAME ACTION BE TAKEN WITH RESPECT TO THE COURTS OF APPEALS, DISTRICT COURTS, AND

BANKRUPTCY COURTS. WITH FURNITURE FUNDS INCLUDED AS PART OF THE APPROPRIATIONS FOR GENERAL COURT EXPENSES, WE WILL HAVE MORE FLEXIBILITY AND CAN, IF NECESSARY, DIVERT THE FUNDS TO COVER UNANTICIPATED OR UNCONTROLLABLE INCREASES IN OTHER AREAS, I.E., POSTAGE, SUPPLIES, EQUIPMENT, ETC. ALSO, SHOULD EMERGENCY SITUATIONS ARISE, THIS ARRANGEMENT PERMITS RELIEVING SUCH SITUATIONS BY DEFERRING FURNITURE PURCHASES IN LIEU OF REQUESTING SUPPLEMENTAL FUNDING. THE TRANSFER OF THESE FUNDS TO THE APPROPRIATIONS FOR OPERATION AND MAINTENANCE AND BANKRUPTCY REDUCES THIS APPROPRIATION REQUEST BY $14,399,000.

PART OF THE APPROPRIATION ESTIMATE, $7,574,000, IS RELATED TO SPACE AND FURNITURE COSTS FOR THE NEW POSITIONS. IF ALL OF THE NEW POSITIONS ARE NOT APPROVED, THE ESTIMATES FOR SPACE REQUIREMENTS AS WELL AS THE TRANSFERS FOR FURNITURE AND FURNISHINGS CAN BE REDUCED ACCORDINGLY.

MR. CHAIRMAN, AS YOU KNOW, WE HAVE FELT FOR SOME TIME THAT THE STANDARD LEVEL USER CHARGES (SLUC) OF GSA ARE EXCESSIVE. THE CONGRESS DID NOT ALLOW ANY INCREASE IN THE SLUC RATES FOR 1983 AND, AS A RESULT OF YOUR COMMITTEE'S INITIATIVE, LIMITED THE 1984 INCREASE TO 7 PERCENT. FOR FISCAL YEAR 1985 WE HAVE INCLUDED $24,839,000 TO PAY GSA FOR RENTAL INCREASES FOR SPACE CURRENTLY OCCUPIED BY THE COURTS. THIS REPRESENTS AN INCREASE OF 20.9 PERCENT OVER THE AMOUNT AVAILABLE IN 1984. AGAIN WE SUBMIT THIS EXCESSIVE INCREASE IN RENTAL COSTS, EVEN THOUGH GSA DECREASED THE FISCAL YEAR 1985 SLUC RATES TO THE RATES EQUAL TO THOSE ORIGINALLY DEVELOPED BY GSA FOR THE FISCAL YEAR 1984 BUDGET. WE REQUEST YOUR CONTINUED CAREFUL ANALYSIS OF THESE INCREASES WHICH WE CANNOT CONTROL.

COURT SECURITY

IN FISCAL YEAR 1985, THE THIRD YEAR OF OUR FIVE-YEAR JUDICIAL SECURITY PROGRAM, A TOTAL OF $25,280,000 IS REQUESTED FOR THE COURT SECURITY APPROPRIATION. THE INCREASED AMOUNT OVER 1984 IS $6,590,000

WHICH PROVIDES FOR ENHANCED SECURITY SERVICES, INCLUDING 600 COURT SECURITY OFFICERS AND ADDITIONAL PROTECTIVE EQUIPMENT, IN ALL 94 JUDICIAL DISTRICTS.

WE HAVE ENTERED INTO A MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES MARSHALS SERVICE DETAILING THE USE OF THESE FUNDS. THE DISTRICT COURT SECURITY COMMITTEES, THROUGH THE CHIEF JUDGE AND UNITED STATES MARSHAL IN EACH DISTRICT, HAVE SUBMITTED THEIR LOCAL REQUIREMENTS. THESE REQUIREMENTS WILL ASSIST THE MARSHALS SERVICE IN SETTING PRIORITIES FOR THE EXPENDITURE OF FUNDS AMONG THE DIFFERENT COURTS.

MR. CHAIRMAN, OUR BUDGET ESTIMATES FOR FISCAL YEAR 1985 ESSENTIALLY PROVIDE FOR INFLATION AND PROGRAM INCREASES DIRECTLY RELATED TO GROWTH IN WORKLOAD. OUR REQUESTS FOR FISCAL YEAR 1985 ARE, WE BELIEVE, CONSERVATIVE AND CONSISTENT WITH YOUR DESIRE TO KEEP FEDERAL EXPENDITURES TO A MINIMUM. ON BEHALF OF THE BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE, LET ME SAY THAT WE CONTINUE TO BE MOST GRATEFUL FOR YOUR CONSIDERATE RESPONSE TO OUR NEEDS. WE LOOK FORWARD TO WORKING WITH YOU ON OUR FISCAL NEEDS FOR 1985.

Attachment I

COMPARATIVE WORKLOAD DATA
FISCAL YEARS 1978 AND 1983

	F.Y. 1978	F.Y. 1983	% Change
COURTS OF APPEALS:			
Filings	19,185	30,387	+ 58.4
Terminations	17,725	29,666	+ 67.4
Pending, End of Year	17,361	22,496	+ 29.6
DISTRICT COURTS:			
Civil Cases			
Filed	140,544	250,855	+ 78.5
Terminated	130,289	219,780	+ 68.7
Pending, End of Year	170,057	243,034	+ 42.9
Criminal Cases			
Filed	34,255	35,390	+ 3.3
Terminated	34,695	33,664	- 3.0
Pending, End of Year	14,352	19,291	+ 34.4
Totals			
Filed	174,799	286,245	+ 63.8
Terminated	168,984	253,444	+ 50.0
Pending, End of Year	184,409	262,325	+ 42.3
BANKRUPTCY PETITIONS:			
Filed	202,518	362,320	+ 78.9
Terminated	211,533	312,758	+ 47.9
Pending, End of Year	235,782	584,796	+148.0
Adversary Proceedings*	.....	173,217	.....
MAGISTRATES:			
Criminal Trial Jurisdiction Cases	102,547**	93,543**	- 8.8
Civil Trial Jurisdiction Cases	540**	3,127**	+479.1
Preliminary Felony Proceedings	99,288**	102,450**	+ 3.2
Other Criminal and Civil Matters	95,186**	166,369**	+ 74.8
PROBATION:			
Persons Received for Supervision	43,060	33,784**	- 21.5
Persons Under Supervision, End of Year	66,681	60,180**	- 9.7
Presentence Investigations	30,509	30,371**	- 0.5
Other Investigations	72,197	95,238**	+ 31.9
Petitions for Naturalization	140,364**	172,877**	+ 23.2
Aliens Naturalized	140,061**	166,121**	+ 18.6

---

*No comparable data prior to fiscal year 1980. These data also include 18,071 motions formerly considered adversary complaints before the change in rules effective August 31, 1983.

**Data for the year ended June 30.

Attachment 2

IMPLEMENTATION OF AUTOMATION PROGRAMS

(Dollar Amounts in Thousands)

COST CENTERS	1984	1985	1986	1987	1988	Total
Courts of Appeals and District Courts:[1]						
Courtran[2]	$ 3,078	$ 3,078	$ 3,078	$ 3,078	$ 3,078	$15,390
Financial	429	429	...	...	...	858
Telecommunications Cost Reduction	239	239	239	239	239	1,195
Electronic Mail	177	177	177	177	177	885
Small and Medium Court Automation Project	295	1,527	762	653	339	3,576
Access to Law Enforcement Systems	115	115	150	188	225	793
Large Metropolitan Court Automation Project	...	537	917	1,370	1,868	4,692
Appellate Information Management System	...	521	679	614	246	2,060
Jury Selection Automation Program	275	575	425	425	425	2,125
Computer Assisted Legal Research	750	750	750	750	750	3,750
Subtotal	5,358	7,948	7,177	7,494	7,347	35,324
Bankruptcy Courts:						
Bankruptcy Court Automation	562	775	979	1,028	1,077	4,421
Administrative Office:						
Support Operations	5,327	4,986	5,212	5,212	5,212	25,949
GRAND TOTAL	$11,247	$13,709	$13,368	$13,734	$13,636	$65,694[3]

---

[1] The Probation Information Management System project is under consideration, subject to evaluation.

[2] Includes Federal Probation Sentencing and Supervision Information System (FPSSIS).

[3] Does not include developmental work by the Federal Judicial Center.

BUDGET ADJUSTMENTS FOR FISCAL YEARS 1984 AND 1985

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

LAST MONTH YOU WERE GIVEN A COPY OF MY OPENING STATEMENT. NOW, HOWEVER, AS A RESULT OF NEW LEGISLATION AND MORE RECENT DATA, I WISH TO AMEND MY OPENING STATEMENT AS FOLLOWS.

OMNIBUS BUDGET RECONCILIATION ACT

ON APRIL 18, 1984, THE PRESIDENT SIGNED THE OMNIBUS BUDGET RECONCILIATION ACT OF 1983, PUBLIC LAW 98-270. AS YOU KNOW, THIS ACT INCREASES THE JANUARY 1984 PAY RAISE FOR MOST FEDERAL EMPLOYEES FROM 3.5 PERCENT TO 4.0 PERCENT. I AM PLEASED TO BE ABLE TO ADVISE YOU THAT WE WILL BE ABLE TO ABSORB THE ENTIRE FISCAL YEAR 1984 IMPACT OF THIS PAY INCREASE WITHIN OUR AVAILABLE APPROPRIATIONS AND PENDING SUPPLEMENTALS. UNLESS CONDITIONS AFFECTING THE FISCAL OPERATIONS OF THE COURTS DIFFER FROM OUR ASSUMPTIONS AS CONTAINED IN THE 1985 BUDGET, IT APPEARS THAT WE WILL BE ABLE TO ABSORB THE 1985 IMPACT OF THIS PAY INCREASE AS WELL.

PROGRAM SUPPLEMENTAL FOR 1984

PENDING BEFORE YOUR COMMITTEE IS A 1984 PROGRAM SUPPLEMENTAL IN THE AMOUNT OF $4,750,000 FOR THE ACCOUNT "DEFENDER SERVICES." DUE TO A HIGHER THAN ANTICIPATED PERSONNEL VACANCY RATE OCCURRING THROUGHOUT THE FEDERAL PUBLIC DEFENDER SYSTEM, IT HAS BEEN DETERMINED THAT $750,000 OF OUR SUPPLEMENTAL REQUEST WILL NOT BE REQUIRED.

FISCAL YEAR 1985 CONCESSIONS OF $5,697,000

BASED ON INFORMATION ACQUIRED SUBSEQUENT TO THE TRANSMISSION OF THE FISCAL YEAR 1985 BUDGET TO THE CONGRESS, THE JUDICIARY FINDS IT

NECESSARY TO CONCEDE A TOTAL OF **$5,697,000.** THIS AMOUNT IS NOT REFLECTED IN THE BUDGET DOCUMENT TRANSMITTED TO THE COMMITTEE. THE CONCESSIONS ARE LISTED BY APPROPRIATION ON THE ATTACHMENT. THE **FIRST ITEM,** IN THE AMOUNT OF **$3,300,000,** IS ASSOCIATED WITH THE EXPANSION OF THE PRETRIAL SERVICES AGENCIES PROGRAM. WHEN YOUR COMMITTEE REDUCED OUR REQUEST FROM 313 TO 200 POSITIONS FOR PRETRIAL SERVICES FOR FISCAL YEAR 1984, WE DID NOT KNOW THE FORM OF ORGANIZATION EACH DISTRICT WOULD ESTABLISH, NOR DID WE KNOW THEIR PERSONNEL REQUIREMENTS. OUR REQUEST FOR THE ADDITIONAL POSITIONS WAS PREDICATED ON PROJECTED FILINGS NATIONWIDE AND A PRELIMINARY WORK MEASUREMENT FORMULA. FOLLOWING THE LETTER SENT BY THE DIRECTOR OF THE ADMINISTRATIVE OFFICE ON FEBRUARY 27, 1984, TO ALL OF THE CHIEF JUDGES OF THE DISTRICT COURTS, THOSE COURTS ADVISED THE DIRECTOR OF THE FORM OF ORGANIZATION THEY SELECTED AND THE STAFFING REQUIREMENTS NECESSARY TO CARRY OUT THE PROVISIONS OF THE PRETRIAL SERVICES ACT.

THE RESULTS OF THIS SURVEY HAVE BEEN SHARED WITH YOUR COMMITTEE'S STAFF. I WOULD MENTION BRIEFLY THAT 8 DISTRICTS HAVE OPTED TO ESTABLISH SEPARATE PRETRIAL SERVICES AGENCIES, 84 DISTRICTS HAVE OPTED TO PERFORM PRETRIAL SERVICES IN THEIR PROBATION OFFICES, AND 1 COURT (NEW YORK, SOUTHERN) HAS NOT YET MADE A DECISION.

BECAUSE SOME COURTS REQUESTED POSITIONS IN EXCESS OF THE WORK MEASUREMENT FORMULA, AND MANY COURTS REQUESTED LESS THAN THE NUMBER OF POSITIONS ALLOWED BY THE FORMULA, WE HAVE ESTIMATED OUR REQUIREMENTS AT 373 POSITIONS. THIS IS CONSERVATIVE. THE FORMULA IS NEW AND UNTESTED. THE TOTAL OF 373 POSITIONS IS 100 POSITIONS FEWER THAN THE NUMBER (473) PROVIDED FOR IN THE 1985 BUDGET. IT IS 27 POSITIONS MORE THAN WOULD HAVE BEEN REQUIRED IF EACH COURT WERE LIMITED TO THE LESSER OF WHAT THEY REQUESTED OR THE FORMULA ALLOWANCE. THE ADDITIONAL 27 POSITIONS WILL BE ALLOCATED ONLY IF SPECIAL CIRCUMSTANCES JUSTIFY THEM OR IF THOSE COURTS WHICH REQUESTED FEWER POSITIONS MUST REVISE THEIR REQUIREMENTS UPWARD.

IN CONFORMANCE WITH YOUR COMMITTEE'S RECOMMENDATION THAT "THE PROBATION SERVICE ABSORB AS MUCH OF THIS FUNCTION AS POSSIBLE WITHIN

CURRENT STAFFING LEVELS," OUR 1985 BUDGET REQUEST FOR 147 ADDITIONAL POSITIONS OVER AND ABOVE THE 326 POSITIONS AUTHORIZED IN THE BASE APPROPRIATON MAY BE REDUCED BY 100 POSITIONS AND $3,300,000.

THE **SECOND ITEM,** IN THE AMOUNT OF **$750,000,** IS THE RESULT OF REFINING OUR ESTIMATES REGARDING OFFSETTING SAVINGS THAT WILL ACCRUE WITH THE PURCHASE OF TELEPHONE SYSTEMS IN THE COURTS AND MORE RECENT INFORMATION PROVIDED BY THE FEDERAL COMMUNICATION COMMISSION REGARDING THE ACCESS CHARGES THAT WILL BE ASSESSED ON EACH OF OUR TELEPHONE LINES BEGINNING APRIL 1, 1984. THE **THIRD ITEM,** IN THE AMOUNT OF **$722,000,** IS FOR THE PURCHASE OF COMPUTERS IN DISTRICT AND BANKRUPTCY COURTS WHICH DUPLICATES A LINE ITEM INCLUDED IN THE BUDGET FOR THE FEDERAL JUDICIAL CENTER. THE **FOURTH ITEM,** IN THE AMOUNT OF **$725,000,** IS THE RESULT OF PLACING A FREEZE ON THE FURTHER EXPANSION OF THE BANKRUPTCY AUTOMATED NOTICING SYSTEM (BANS). THIS IS IN KEEPING WITH THE WISHES OF CONGRESS TO ENCOURAGE PRIVATE CONTRACTING OF THE NOTICING FUNCTION AT THE EXPENSE OF THE ESTATES IN BANKRUPTCY. THE **FIFTH ITEM,** IN THE AMOUNT OF **$200,000,** IS A PROJECTED SAVINGS AS A RESULT OF REDUCING THE NUMBER OF SETS OF THE NEW EDITION OF WEST'S FEDERAL PRACTICE DIGEST. A TOTAL OF 235 SETS WERE ELIMINATED THROUGH THE COOPERATION OF THE JUDGES WHO HAVE AGREED TO SHARE SETS OF THIS NEW EDITION.

COURT SECURITY

MR. CHAIRMAN, THERE ARE TWO OTHER ITEMS I WOULD LIKE TO MENTION WHICH AFFECT THE JUDICIARY'S APPROPRIATIONS BUT DO NOT CHANGE THE OVERALL TOTAL OF THE APPROPRIATIONS REQUEST. IN ORDER TO ADMINISTER THE JUDICIAL SECURITY PROGRAM, THE UNITED STATES MARSHALS SERVICE RETAINED $278,000 AND 8 POSITIONS IN ITS FISCAL YEAR 1983 BUDGET. IT HAS DETERMINED THAT AN ADDITIONAL 5 POSITIONS ARE NECESSARY TO ENSURE AN ORDERLY EXPANSION AND CONTINUED ADMINISTRATIVE SUPPORT OF THE COURT SECURITY PROGRAM. THE MARSHALS SERVICE WAS NOT ABLE TO SECURE APPROVAL OF THE ADDITIONAL FUNDS AND POSITIONS BY THE EXECUTIVE BRANCH. THE MARSHALS SERVICE HAS PROPOSED THAT THE COST

OF THE PROGRAM, INCLUDING ADMINISTRATIVE SUPPORT, SHOULD BE INCORPORATED IN THE BUDGET FOR THE JUDICIARY AND, ALONG WITH THE OFFICE OF MANAGEMENT AND BUDGET, WILL SUPPORT A TRANSFER OF THE CURRENT POSITIONS AND FUNDS CONTAINED IN ITS BUDGET. THE MARSHALS SERVICE NOTIFIED THE ADMINISTRATIVE OFFICE THAT THE EXPANSION IN ADMINISTRATIVE SUPPORT IS CRITICAL. THE BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES AGREES THAT THE SUPPORT COSTS SHOULD BE INCLUDED IN THE "COURT SECURITY" APPROPRIATION. THEREFORE, WE RECOMMEND THAT YOUR COMMITTEE APPROVE **A TRANSFER OF THE 8 POSITIONS AND $278,000** INCLUDED IN THE MARSHALS SERVICE BUDGET TO OUR "COURT SECURITY" APPROPRIATION. IN ADDITION TO THE TRANSFER, IT IS REQUESTED THAT THE COMMITTEE APPROVE 5 ADDITIONAL POSITIONS (FOR A TOTAL OF 13 FULL-TIME PERMANENT POSITIONS), THE FUNDING FOR THE ADDITIONAL 5 POSITIONS TO BE ABSORBED BY THE "COURT SECURITY" APPROPRIATION.

HOLDING CELLS

THE SECOND ITEM DEALS WITH THE UNITED STATES MARSHALS SERVICE'S RESPONSIBILITY FOR THE PLANNING, INSTALLATION, AND SPACE RENTAL CHARGES FOR HOLDING CELLS LOCATED IN OUR COURTHOUSES. A RECENT SURVEY OF SPACE OCCUPIED BY THE JUDICIARY REVEALED THAT WE WERE PAYING RENTAL ON CERTAIN HOLDING CELLS. THE UNITED STATES MARSHALS SERVICE HAS AGREED THAT THE PAYMENT OF THIS SPACE IS ITS RESPONSIBILITY, BUT HAD NOT INCLUDED FUNDS IN THE 1985 BUDGET FOR THIS PURPOSE. AS SOON AS THE EXACT AMOUNT OF THIS HOLDING CELL SPACE HAS BEEN IDENTIFIED, WE WILL WORK WITH YOUR COMMITTEE'S STAFF AS TO THE AMOUNT OF FUNDS TO BE TRANSFERRED TO THE MARSHALS SERVICE.

Attachment

REDUCTIONS IN FISCAL YEAR 1985 BUDGET REQUESTS*

"SALARIES OF SUPPORTING PERSONNEL"

Line Item 14	Pretrial Services Program	$-2,150,000

"EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS"

Line Item 10	Expenses of new personnel (Pretrial Services)	$- 650,000
Line Item 11	Expansion of automated systems in courts of appeals and district courts - Large Metropolitan Court Automation Project (LAMCAP)	- 537,000
Line Item 12	Telephone System Acquisition	- 500,000
Line Item 13b	Lawbooks - New Editions	- 200,000
Line Item 15	Telephone line access charges	- 215,000
	Subtotal "Expenses of Operation and Maintenance of the Courts"	$-2,102,000

"BANKRUPTCY COURTS, SALARIES AND EXPENSES"

Line Item 10	Nonrecurring expenses authorized in fiscal year 1984 - Bankruptcy Automated Noticing System (BANS)	$- 200,000
Line Item 14	Expansion of automated systems in the bankruptcy courts - Bankruptcy Court Automation Project (BANCAP)	- 185,000
Line Item 16	Increase for telephone line access charges	- 35,000
	Subtotal "Bankruptcy Courts, Salaries and Expenses"	$- 420,000

"SPACE AND FACILITIES"

Line Item 8	Space and furnishings for new personnel (Pretrial Services)	$- 500,000

"ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS"

Line Item 14	Administrative Services Division (2 positions for BANS)	$- 44,000
NA	Appropriation base (BANS)	- 481,000
	Subtotal "Administrative Office of the United States Courts"	$- 525,000
	GRAND TOTAL	$-5,697,000

*Transfers between the Administrative Office and the Marshals Service for court security are not included.

Judge CLARK. With that comment, Judge Harvey and Mr. Foley and I are open to any questions that you might have with regard to the business of the regular, inferior courts of the United States. [Laughter.]

BUDGET FREEZE

Senator RUDMAN. Let me ask you, Judge Clark, we were considering a proposal to freeze 1985 appropriations across the board at the 1984 levels. As a matter of fact, that is precisely what we are involved in at this time, this matter of the Federal budget and the reconciliation.

Your request for the courts of appeals, district courts, and bankruptcy courts totals $956 million, which is about $100 million higher than 1984. Could you tell us what impact the budget freeze would have on the operation of the judiciary? Do you think a freeze is attainable given your needs?

Judge CLARK. Senator, this question came up I think it was 2 years ago in hearings when there was a similar proposal. We made a pretty detailed analysis at that time.

We have heard of this movement in the Congress this year and we prepared an additional analysis. We think that it would be disastrous, and I give you these reasons: The courts are essentially a service organization. Congress tells us how big a vessel we are to use to contain the services. You either enlarge it or contract it. It hasn't been contracted in the last few years. Congress has mainly made additions to the jurisdiction of the courts recently.

When a litigant comes in who is within that jurisdictional vessel, he has a right to file his case. We have no right to pick and choose, saying we will cut you off because you are now the 115th case and we can only take 114 cases this year with the amount of staffing and judges that we have.

Our increases are increases to accomplish at what we think is the bare bones cost of the services that Congress has designated for us to perform. We are unlike many agencies who can either choose to go on with a program or not choose to go on with a program. We have no way of securing authorizing legislation for a particular project. The appropriations process is one in which we come to you and ask you to fund what has already been authorized.

I have copies of the response that was made to a similar question 2 years ago, which is in general responsive to this question that you ask, together with an analysis that the staff has made. I would like to ask to extend my remarks by filing a formal copy with you.

But I would just say that there is no way for us to absorb an 11-percent reduction in our budget and still continue to provide the services that we are mandated to provide.

[The information follows:]

FREEZE ON DISCRETIONARY PROGRAMS

Senator **Weicker**. Thank you, Senator.

As you are aware, last week the Senate Budget Committee agreed to a compromise level for the fiscal 1983 budget which would essentially freeze all discretionary programs at the 1982 level. Could you tell me what the impact on the judicial system would be if you were held to the 1982 level?

Judge **Clark**. I think it would be disastrous, Senator Weicker. We don't have discretionary programs as such. The judiciary is a service organization. It is an open-end service organization. The Congress fixes our jurisdiction and the litigants who use that jurisdiction fix the level of services we will render. So the things that the courts have done in the way of increasing staff and increasing facilities have only been measures to meet the demands that the Congress and the litigants that use the court system have put on the system.

It is not a question, such as comes up with some agencies, that we could elect to go into a new field or start a new adventure. It is a question of simply meeting the demand for services that we must render to stay in business.

I don't mean to sound uncooperative, because we are, we wish to be. We have some pretty intensive review plans within the judicial makeup so that programs don't get to be luxurious items and so judges don't overspend and overstaff. The Administrative Office keeps a tight rein on the funds that we are allotted and on the programs that the Judicial Conference of the United States authorizes be undertaken. But they are not discretionary programs. They are programs that are needed to meet the delivery of services that we are required to render.

It is also hard to say that the last case filed in the court is the least important. It may be one of the most important cases you have. If we are cut back to 1982 levels and an important case comes in in 1983, it may be the one that doesn't get serviced or doesn't get serviced promptly. If we don't get clerks in the bankruptcy area, we delay the delivery of the distribution of funds that have been accumulated by the Bankruptcy Court to creditors. If we don't get district clerks in the District Courts, filings are not handled promptly. Our jury management program would have to suffer. Our jury management and document management programs are all things we have been instructed by Congress to pay more attention to.

I don't know, it looks like we are sort of between a rock and a hard place. I think the judiciary budget we have submitted this time is as lean a budget as we can submit and still carry out the functions we have been assigned.

Senator **Weicker**. Maybe if Congress has its way, as I have seen the activity on the floor of the U.S. Senate in the past year, maybe you will have a lot less to do. Your functions are being taken over by the Senate of the United States. [Laughter.]

Judge **Clark**. Those jurisdiction bills are pending, too. I don't know what they will amount to.

The Judiciary is primarily service oriented and we are not involved in programs and/or activities which can be discontinued, postponed, or curtailed. A substantial portion of the Judiciary budget is virtually uncontrollable.

For example, the "Salaries of Judges," which for fiscal year 1985 is estimated at $74.2 million, cannot be diminished. Our budgetary requirements are based on the number of judgeships authorized by Congress taking into account anticpated vacancies and the number of judges expected to take senior status.

Representation of criminal defendants and other persons pursuant to the Criminal Justice Act also is uncontrollable in that the rates of compensation for court-appointed counsel are established by law. The budgetary requirements for the implementation of that Act naturally are dependent upon the number of persons prosecuted and who qualify financially for such representation. Our estimate for "Defender Services" for fiscal year 1985 is $43.7 million.

Expenditures relating to petit and grand jurors also are virtually uncontrollable. The litigants in both civil and criminal cases have a constitutional right to a jury trial and the fees and allowances of jurors are fixed by the Congress. Grand juries are convened at the request of U.S. Attorneys and, therfore, our budgetary requirements as they relate to grand juries, in large measure, are governed by the policies of the Department of Justice. We have, for fiscal year 1985, requested $43.5 million for "Fees of Jurors and Commissioners."

Almost one-half of the increase in our budgetary requirements, 1985 over 1984, represent what are referred to by the Appropriations Committee as "Adjustments to base and built-in changes." These adjustments represent increases in the cost of operations without corresponding increases in productivity or in the level of services being provided to the Bar and the general public. The Judiciary is subjected to the pressures of inflation as are other agencies of the government. Aside from general pay increases, we are subject to the recurring annual cost of within-grade salary advancements, billings for space by GSA, increases in the Federal Telecommunications System charges, and other increases in contract rates and charges for supplies and services. The increase in our rent, 1985 over 1984, is estimated at $24.8 million. These so-called adjustments to base cannot be absorbed without serious adverse effects on the operation of the courts.

The program increases for the courts of appeals, district courts, and bankruptcy courts, 1985 over 1984, approximate $53 million. These increases primarily relate to requests for additional supporting personnel, i.e., probation officers and staff, deputy clerks, librarians, etc. The staffing requirements, as a rule, are based on formulas adopted by the Judicial Conference after very extensive and detailed work measurement studies conducted to determine the amount of effort involved in the processing of cases or performing other fuctions. Requests for additional personnel are based entirely on projected case filings and other work which is uncontrollable. Criminal case filings or, for that matter, the number of prosecutions are a matter within the discretion of the Department of Justice. Access to the courts by civil litigants is governed by law and the courts have virtually no control over the number of cases filed. The number of probationers and parolees under the supervision of probation officers, likewise, is uncontrollable. Bankruptcy case filings, in some measure, are due to the current state of our economy. All litigants, civil and criminal, are entitled to a speedy trial. If the courts are not provided with adequate supporting personnel, it will delay the disposition of cases and result in a critical backlog of pending cases which is currently at a record high.

If the courts are expected to operate in fiscal year 1985 at the level authorized for fiscal year 1984, we wou necessarily have to absorb the so-called adjustments to base and built-in changes which are of an uncontrollable nature and which in fiscal year 1985 are estimated at approximately $48 million. In effect, this would constitute a reduction in obligational authority of 11 percent. Coupled with the increasing caseload, a freeze on our appropriations at the 1984 level would be devastating and would virtually force many of the courts to simply close their doors.

It is not our intent to dramatize the adverse effects of a freeze, but we can assure you it would present a very serious problem.

LIMIT COURT JURISDICTION

Senator RUDMAN. Unless, of course, the Congress at the same time wanted to somehow lessen your jurisdiction.

Judge CLARK. Please.

Senator RUDMAN. Which I haven't seen happen.

Judge CLARK. Please. [Laughter.]

This is a subject that we have addressed with another committee of the Senate just a month and a half ago. The curtailment of jurisdiction of the Federal courts is an absolute essential if the courts are going to continue to perform a Federal function. We have trivialized the business of Federal courts.

Senator RUDMAN. I couldn't agree with you more, Judge.

Judge CLARK. We have too many minor cases that are taking the time of Federal judges that is needed for more important cases.

Senator RUDMAN. I know there are two Senators at this table who agree with that. Senator Specter has been on the leading edge of these efforts.

Judge CLARK. I know the Senator's legislation is concentrated in this very area.

IMPACT OF BUDGET FREEZE

Judge HARVEY. If I may add to the Judge's remarks, so much of the Federal budget is in the control of other people. If, for example, the U.S. Attorney decides to indict 12 people, that is one thing. If he decides to bring in 100 indictments, that is another. It affects not only the defenders, U.S. Attorneys, but it affects the number of juries, petit juries, and grand juries. So much is in the control of other people. It is truly a service budget, as Judge Clark has indicated.

Senator RUDMAN. I have some very serious concerns about the kinds of freezes that are so indiscriminate, because the problems we have with the deficit are caused by a lot of things, including the Federal courts. But around here, rather than use a surgeon's scalpel, we tend to use a dull axe. That is why reduction of the Court's budget has been within the request of some folks who would like to reduce Federal spending.

I did think ~~it~~ was important to have your answer again this year on the record. I tend to agree with it.

COURT SECURITY

Let me turn away from specific budgetary matters. I am sure Senator Specter has some questions and probably would like to discuss some of his legislation with you.

GSA has changed the method in which it provides perimeter security around Federal courthouses. As I understand it, they put roving patrols in cars in place of stationary guards. I guess I have two questions. Is this resulting in a decline of security provided, and have you had to increase your own security efforts through your Marshals Service as a result?

Judge CLARK. The answer is affirmative to both of those. The GSA perimeter guard service was not too good to begin with. Leaving the fixed stations at the entrances to court buildings and going to roving patrols made it effectively useless.

When it was announced to us by GSA, we began to make plans to provide alternate security. We have now worked with the U.S. Marshals Service in a cooperative venture that this committee has funded for 2 years now. We are asking funding again for that. That provides a very fine level of security for the courts. We think this is the answer to the security problem for the courts, and we urge the approval of the request that we are making this year to fund the security program.

I might add, Senator, that the reason we turned to the Marshals Service rather than doing this internally is we thought they already had the expertise to do this without us creating another division in the Administrative Office that would have to learn the ropes.

Senator RUDMAN. I don't think there is anything more critical to the courts these days than being mindful of security and security needs. It seems that probably what the GSA did may have been a blessing in disguise, because I think the courts really have to be concerned with their security.

You do have the Marshals Service, which is an extraordinarily good service. You probably ought to continue that. I certainly would support funding for that.

Judge CLARK. The courts are kind of like the Congress. We are in line to attract all of the dissidents.

Senator RUDMAN. You call them dissidents. I am less polite. But then you are a judge and I am not. [Laughter.]

At this point I have a couple other questions, but I believe that several of them Senator Specter might like to talk about.

PRETRIAL SERVICES

My friend from Pennsylvania, do you want to talk about pretrial services and whatnot?

Senator SPECTER. I would like to.

Senator RUDMAN. Is that one of the things you are going to get into?

Senator SPECTER. No, not that.

Senator RUDMAN. Let me ask that question and then I will yield to you.

Your recent report to the committee on pretrial services shows most courts performing pretrial service functions through their probation offices, using existing staff. As a result, you have reduced your original request for pretrial services officers by 100 positions and $3.3 million.

Some members of the House Judiciary Committee have felt strongly that the pretrial services and probation functions might well be performed by separate organizations.

I wonder if you might discuss the merits of your approach as opposed to what they advocate. I understand there is some contention here as to what the best and most efficient way to go is.

Judge CLARK. Senator, the problem we have is we have read the legislation as carefully as we could. It is the view of the Administrative

Office and the courts and the Judicial Conference that we are required to staff for pretrial services regardless of whether those services are performed in an existing probation office or whether they are performed in a separate unit known as a pretrial services unit.

Congressman Hughes, who was an ardent sponsor of this legislation, who was on the Conference Committee, does not agree with that interpretation. It is his interpretation that if the courts choose to keep the pretrial function within the probation service, that they are not to be furnished any additional personnel or any additional funding for the provision of that service. If any additional personnel were to be required, the court would have to establish a separate pretrial services office with a separate pretrial officer who supervises that function.

In one instance, it was pointed out in our discussions this morning, preparatory to coming up here, one of the relatively small districts has chosen to have a separate office. I believe that there are two officers in that district. The head of the probation service is a JSP-14 and the head of the pretrial services office in a separate office would probably be a JSP-13. A JSP-13 starts at $36,000 a year. There are two officers of the government receiving approximately $79,000 in that relatively small district.

Our feeling, according to our reading of the legislation, is that the chief judge of the district makes a choice. If his choice is to go with a pretrial services organization separate from probation, he then must secure the approval of the circuit judicial counsel. With the approval of the circuit judicial counsel, he can then establish that separate office.

We did make a detailed survey of each district in the Nation. We made recommendations. I am pleased to say the example I gave you is one of the few in which they have gone against the recommendation to establish the service within probation and have created a separate office.

The biggest changes we had were in the opposite direction. Judges said, "No, we don't want to establish a separate pretrial office even though the Administrative Office recommended a separate branch." They said, "No, we want to perform it within probation." So that has been the biggest thing up to now.

That is the difference of opinion between us. Congressman Hughes and his people who have the same view have a very pointed objection to this, and they point to the legislative history of this act, and it is an arguable point. We have done our best to interpret the words of the legislation. We think they override the legislative history.

So we followed the advice of our legal officer and the wishes of the Administrative Office and the Conference in giving this option to the local offices, but coming to your committee and asking for funding for that separate service where additional personnel are required to perform it, even though it is being performed within the probation service.

AUTOMATION IN THE COURTS

Senator RUDMAN. I have one last question. That is, you have $66 million in costs over the next 5 years associated with various types of automation programs. We have been trying to examine all of these initiatives, governmentwide. Most of them, of course, are much larger than $66 million. But $66 million is still a tidy sum.

We were wondering whether or not there has been some very careful evaluation of the initiative in terms of cost and benefit, productivity, and so forth, and whether you are comfortable that when you are through spending the $66 million you will have really achieved what you are trying to achieve.

Judge CLARK. Senator, we think we have done it as cautiously and as correctly as it could be done. We have what we call a 5-year program. Mr. Foley is here with me this afternoon. Mr. Larry Stoorza, who heads that particular Division in the Administrative Office, is here also. If my answer is not complete enough, I request they be allowed to address it further.

That program was created by a group both from the Administrative Office and the Federal Judicial Center in close contact with the courts who are going to be receiving the service, so we have input from the users as well as input of this committee that studies the latest technology, and is knowledgeable from a professional standpoint in the field.

The 5-year plan is a rolling plan. In other words, we try to project our needs 5 years out. This next year we will drop 1 year and project another year, so that this plan has a forward-looking feature that operates at all times.

One of the things that we learned when we began to study the thing in detail is that at the inception of automation, the plan was to go with large computers that had tremendous capacity, that were located here in Washington, and we were going to tie them into the local areas with telephone lines. The concept has changed radically since we originally adopted it. The cost of telephone transmission has gone up. The capacity of small computers has gone up dramatically. So in our 5-year plan now the tendency is what we call decentralization. We are moving that function back into the courts.

The limitation on just simply turning it over is that you have to have technical people that can program these computers and you have to have technical people that can keep them up to date and service them. So this 5-year plan has a lot to do with how we manage the localized concept that we have now gone to.

Mr. Foley, do you have any additional comments you want to add?

Mr. FOLEY. The only thing I could add, Judge, is that as far as our clients, the judges, are concerned, we are not going nearly fast enough. But we are very mindful, of course, of not only the costs involved but the rapid obsolescence of so much of this equipment that it requires constant study. We work very closely with the Federal Judicial Center, our sister agency, which is the developing agency. We are the operating agency.

COMPETITIVELY BID

Senator RUDMAN. Are larger numbers of pieces of similar hardware that will meet a particular specification for automation competitively bid?

Judge CLARK. I will ask Mr. Stoorza to answer that.

Senator RUDMAN. Would you identify yourself for the court reporter?

Mr. STOORZA. Larry Stoorza, Assistant Director of Management Systems and Services.

The answer to your question is yes. We just recently completed a competitive bid for 95 computers in the small and medium court area. We get a much better price rate by grouping these. We will divide procurement of them over the next few years. We will do something similar, shortly, for the large courts and appellate courts.

Senator RUDMAN. Thank you very much.

Judge Clark, we have a number of other questions.

I will strike that. We will not have those questions. Those have already been submitted and they are going to be included in the record. I think you have already answered some of them.

If you wish to extend any of your remarks in terms of any of these questions, this record will be open for about a week or 10 days.

BACKLOG IN FEDERAL COURTS

I am going to yield to Senator Specter at this time.

Senator SPECTER. Thank you, Mr. Chairman.

Judge Clark, I would like to pursue the question of delay, the backlog in the Federal courts, and the issue as to what might be done about it.

I have explored from time to time the question of having some time limit established congressionally as to the conclusion of cases. I understand the heavy workloads which are present in Federal courts. Part of my thinking has been that if we really establish some standards as to what speedy justice ought to be, then we would have to come to grips with the issue of jurisdiction, the issue of number of judgeships, but under some standards to be supervised by the Congress.

The threshold question in my mind is whether the Congress has the authority to establish such time limits. I would be interested in your judgment on that question.

Judge CLARK. Senator, I don't understand how it would be possible. Let me give you an example that is close to home. It involves the courts in the Fifth Circuit that are in the most trouble. Mr. Foley and I were talking this morning about some extraordinary measures to alleviate the problems in the Southern District of Mississippi and also in the Eastern District of Texas.

The Southern District of Mississippi has case terminations that are the second highest in the United States and the highest in the Fifth Circuit. So they are getting rid of cases as fast as any Federal judges can. Their filings are in excess, far in excess, of terminations. They get more cases every year because of the liberal jurisdictional limits that are open to people to come into Federal courts.

These are tough cases. These are cases like asbestos disease that require a full jury trial and many days to complete. And they already operate under a speedy trial limitation now in criminal cases. So all the time that the civil case docket is growing, the judge has to interrupt that docket from time to time to take on the criminal cases that have the age on them that make them susceptible to dismissal to meet the Speedy Trial Act in the criminal field.

I don't know how that court would manage it. I don't know what the penalty would be in the civil field. At least you can be threatened with dismissal in a criminal case. But if you dismiss a civil case, all you do is make the defendant happy. It is not the same sort of a situation that you can work in the criminal field.

JURISDICTIONAL LIMITATIONS

I seriously urge the Congress to take the closest possible look at the jurisdictional limitations. I will tell you this: We make a number of reports. In fact, I am wondering if we might not make too many reports to each other within the Federal judicial area. These reports are critical of judges that have cases more than 3 years old.

But as you can imagine, in these two districts, because filings so greatly outnumber terminations—we are going to try to compose a task force this fall, made up principally of circuit judges who have former trial experience, who will move into these impacted districts and present themselves with a court reporter and with adequate temporary staffing to say to the bar, and with plenty of time, plenty of notice to the lawyers involved, we are going to do business in October, November, or December, or whatever month is selected. You be here and ready to try your case that is 2 years old or 3 years old. A few are even older than that. But they get that age on them because the judges are simply not able to take on these docket-busting cases that are going to require 2 or 3 weeks to try. When they have this caseload that is piling in all the time, this occurs every day.

Judge Harvey is the one who might make a comment before we go to the appellate courts because there is another story there that is a little happier one. I will tell you about some limitations.

TIME LIMIT FOR CONCLUDING CASES

Senator SPECTER. Before Judge Harvey comments, coming back to the threshold question, does the Congress have the authority to impose such time limits, in your opinion, if you care to give an opinion.

Judge CLARK. I would not say the Congress does not have the authority to do so. All I can tell you is I cannot yet conceive of a way you could do it equitably on the civil side of the docket. You already have on the criminal side. We are meeting those deadlines. Those strictures are being met, but they are being met at the expense of the civil docket. We are deferring people's claims for injury, people's claims for breach of contract, people's claims for tax relief, patent resolution, and all of the other things on the civil side so we can attend to the speedy trial limits on the criminal side.

INCREASED CASELOAD

Judge **Harvey**. Senator Specter, I am the U.S. district judge operating in two trial courts, one in Bay City, Mich., and one in Port Huron, Mich. My civil docket alone has increased 77 percent in less than 3 years. I am getting civil case filings at the rate of more than 720 per year.

I am operating with the same number of bodies on my staff, the same number of law clerks, a court reporter, deputy clerk of the court, and so forth, that my predecessor had 5 years ago.

In the intervening period of time, in that 5 years, the caseload has multiplied. It is two and a half times more. He never had to wrestle with environmental cases, which the Congress has enacted, coming out of, for example, in my case, the Dow Chemical Company, nor the vast number of civil rights cases that have come about.

Senator **Specter**. How long have you been on the bench?

Judge **Harvey**. Ten years. I am in my 11th year.

Senator **Specter**. How long were you in the Congress?

Judge **Harvey**. I was in the Congress 14 years.

Senator **Specter**. You are working harder now?

Judge **Harvey**. I am working much harder, yes.

Senator **Specter**. You can always come back. [Laughter.]

SPEEDY TRIAL ACT

Judge **Harvey**. All I can say is there has just been a tremendous explosion in the courts in the number of filings. If I can use the Criminal Speedy Trial Act as an illustration, it has worked to our disadvantage in the trial courts for this reason: The civil case attorneys are smart enough to know when these various criminal cases are listed on the docket that their case is not going to be heard. It used to be that we could set eight or nine cases on a Monday morning and call them and frighten the civil case attorneys into making the settlement. Now we can't do that because they see these criminal cases sitting on the docket and they know they are going to be tried and their case is not going to be called under any circumstances whatsoever. So they just go away and come back another day. You really don't settle your case until you are right on the courthouse steps and the pressure is on.

We are complying with the Speedy Trial Act, but it has greatly handicapped the trial courts.

COURT-ANNEXED ARBITRATION

Senator **Specter**. What about court-annexed arbitration as a method of speeding up the disposition of cases in the district courts?

Judge **Harvey**. Mediation, which is very similar, has worked very well in the Eastern District of Michigan, as I think Justice Powell referred to earlier.

Senator **Specter**. Do you have the rule that on appeal, if the result is not greater than——

Judge HARVEY. Ten percent, yes. Then if one party goes on and he loses and doesn't gain more than that, then he picks up all the costs on the other side.

Senator SPECTER. Including attorney's fees.

Judge HARVEY. Right. Actual attorney's fees, which are very substantial.

I am also familiar with the effort in Pennsylvania and also with the effort of two pilot programs taking place, one in Pennsylvania and one in the Northern District of California. I have talked to Judge Peckham about it in California. He thinks it is a grand program.

Senator SPECTER. What are they using?

ARBITRATION

Judge HARVEY. They are using arbitration, all under local rule, which they passed as a pilot program. It is working very favorably.

Senator SPECTER. How does mediation differ from arbitration?

Judge HARVEY. They are both done by local rule.

Senator SPECTER. Well, the arbitration in the Eastern District of Pennsylvania is handled by lawyers, panels of three, hearing the evidence and deciding the case.

Judge HARVEY. Exactly the way the mediation is handled in the Eastern District of Michigan. So I think it is really a different name, that is all. The process is essentially the same.

Senator SPECTER. But the mediation does involve a verdict?

Judge HARVEY. It involves a verdict, three attorneys: one picked by the plaintiff, one by the defendant, and one neutral. And a verdict is reached, after listening to testimony, and announced, and then the 10-percent rule goes into effect.

Senator SPECTER. The arbitration differs. Neither side has any selection rights under the Philadelphia practice.

Judge HARVEY. I am not sure if that is true under the California practice or not. But those two are the pilot programs, in Pennsylvania and in California. But they work very successfully. Alternatives to trial are certainly necessary.

ASBESTOS CASES

Senator SPECTER. Judge Clark, you referred to one special district as having an extraordinary disposition rate but a growing backlog. You had mentioned asbestos cases, too. Does that jurisdiction have any special reason for having many asbestos cases filed?

Judge CLARK. There is a shipyard there. We have the same problem, and I don't mean to emphasize the Southern District of Mississippi over the Eastern District of Texas. Those are the two most impacted districts in the Fifth Circuit. They are not the only two in the Nation by any means, but they are the two in my circuit that are causing me the most problem from an administrative standpoint.

In the Southern District of Mississippi, the number of pending cases per authorized judgeship is over 1,100, and there is a judgeship vacancy in that district.

In Eastern Texas, it is over 1,000, almost 1,100, and there is also a judgeship vacancy in that district.

SUMMARY TRIALS

Senator, if I could switch back just one minute to the prior question, I might mention a program that you might be interested in. Perhaps you already know about it.

Judge Lambrose in the Northern District of Ohio is using a very interesting program in which he offers attorneys the right to go before a jury for a tentative trial, and they can submit the facts on a stipulated basis to this jury, and then get the jury's tentative decision, which they can either accept or reject. It is a little bit of a variation over having a group of lawyers decide what a case is worth. It has been something that has been effective in a number of instances in his district.

Senator SPECTER. Is that when there are disputed issues of liability as well as damages?

Judge CLARK. Yes, sir. It covers both. It is not a binding verdict.

Senator SPECTER. How do they do it on such a submission?

Judge CLARK. They put on a statement that this is the way the accident happened. These are the claims. This is the evidence the plaintiff would offer. This is the evidence the defendant would offer.

Senator SPECTER. Is that all in writing?

Judge CLARK. I think it is all in writing.

Judge HARVEY. No. I am familiar with it because it has been done in Michigan. Judge Lambrose has come up there and done it.

It is really the use of the opening statement and closing arguments by the attorney to the jury. I have seen it done very skillfully, where, for example, instead of just making an argument, one lawyer would put his law partner on the stand just as though he or she were the witness and question them and bring out questions about the case in that fashion and then thereby tell the story to the jury in that fashion.

They are each allocated an hour or hour and a half apiece, whatever is agreed upon in advance. Some attorneys just get up and summarize their case in that fashion to the juries and what their evidence would prove, and they utilize certain exhibits which were agreed upon in advance and so forth. Others put their law partner or some group of persons on the stand and bring out questions.

Then at the end of that hour they are given 5 minutes or 10 minutes or 15 minutes, whatever is agreed upon, to summarize by way of closing arguments, and then the jury is sent out, with very brief instructions from the judge.

Senator SPECTER. What has the acceptance rate been of those nonbinding verdicts?

REPORT ON SUMMARY JURY TRIAL

Judge HARVEY. It has been good. There is an abundance of information I could send the committee, if you would like, in printed form that could be added to your hearing. I am familiar with it.

Senator RUDMAN. Yes

Judge HARVEY. It is advisory. If you would like the information, I would be glad to supply it.

Senator RUDMAN. Why don't we get it for the record.

[The information follows:]

THE SUMMARY JURY TRIAL

AND

OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION

A REPORT TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

JUDGE THOMAS D. LAMBROS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND, OHIO

JANUARY, 1984

(A complete copy of the report, including the appendixes, has been filed with the Committee.)

This report was especially prepared for the Judicial Conference Committee on the Operation of the Jury System.

THE COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Honorable T. Emmet Clarie
United States District Court
Hartford, Connecticut
Chairman

Honorable J. Waldo Ackerman
Chief Judge,
United States District Court
Springfield, Illinois

Honorable Howard C. Bratton
Chief Judge
United States District Court
Albuquerque, New Mexico

Honorable William B. Enright
United States District Court
San Diego, California

Honorable John Feikens
Chief Judge,
United States District Court
Detroit, Michigan

Honorable Clifford S. Green
United States District Court
Philadelphia, Pennsylvania

William R. Burchill, Jr.
Deputy General Counsel
Administrative Office of
the United States Courts
Washington, D.C.

Honorable June L. Green
United States District Court
Washington, D.C.

Honorable Wm. Terrell Hodges
Chief Judge
United States District Court
Tampa, Florida

Honorable James R. Miller, Jr.
United States District Court
Baltimore, Maryland

Honorable John F. Nangle
Chief Judge
United States District Court
St. Louis, Missouri

Honorable Charles Schwartz, Jr.
United States District Court
New Orleans, Louisiana

Honorable Joseph L. Tauro
United States District Court
Boston, Massachusetts

Robert K. Loesche
Assistant General Counsel
Administrative Office of
the United States Courts
Washington, D.C.

PREFACE

The use of alternative dispute resolution techniques has received considerable attention in recent years. The need for effective alternatives, and their positive results on our judicial system, cannot be disregarded. This is the message delivered by the Chief Justice of the United States Supreme Court in his 1983 Year-End Report on the Judiciary, wherein it was stated that "[t]he 'minitrial' and the summary jury verdict are being used in various jurisdictions in the United States and are proving effective."

The genesis of the Summary Jury Trial took place in 1980, when I was trying two personal injury suits before full juries. It struck me that both of these cases, one an FELA and the other a diversity auto accident, should have settled prior to trial. The reason that they didn't was that counsel and their clients felt that they could obtain a better resolution from a jury than from their pretrial settlement negotiations. It occurred to me that if only the parties could gaze into a crystal ball and be able to predict, with a reasonable amount of certainty, what a jury would do in their respective cases, the parties and counsel would be more willing to reach a settlement rather than going through the expense and aggravation of a full jury trial.

While hearing the second of the two cases, I conceived the idea of a summarized trial to a jury, and what is now known as the Summary Jury Trial was born. The first Summary Jury Trial concerned a products liability claim of a defective football helmet. After exhausting all possible pretrial attempts to reach settlement, a Summary Jury Trial was held, after which the case settled. Since that time, the process has blossomed into a viable alternative dispute resolution technique.

Summary Jury Trial is but one of a variety of alternative dispute resolution processes in use today. Each has its own particular merit, and compliment each other. The processes are not in competition with each other. They simply serve varying needs based on particular circumstances and the particular place any one case finds itself on the time line toward resolution. Summary Jury Trial is the final alternative before full trial.

This report will discuss the use of alternative methods of dispute resolution and, in particular, the Summary Jury Trial. Discussions held between myself and the members of the Judicial Conference Committee on the Operation of the Jury System on July 28 and 29, 1983, in Lake Tahoe, Nevada, indicated the Committee's deep and increasing concern in the reduction of juror costs while maintaining the effectiveness of our legal system. The use of the Summary Jury Trial was discussed as one method toward achieving that end. Experience in the Northern District of Ohio and in a number of other jurisdictions demonstrates that the Summary Jury Trial can be an effective tool in overcoming the burden of an ever increasing docket and in reducing juror costs, while not sacrificing the rights of individuals who seek justice through our jurisprudential process.

I would like to thank the members of the Committee for permitting me to participate in their discussions and hope that this report will serve useful in accomplishing their goals.

THE SUMMARY JURY TRIAL
AND
OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION

This country has experienced, in recent years, an explosion of litigation and regulatory disputes. This trend has overloaded the courts and increased the costs of our traditional methods of resolving disputes. Devoting his 1982 Year-End Report on the Judiciary exclusively to the problem of overload on the courts, Chief Justice Warren Burger called for the creation of new dispute resolution tools by using "the inventiveness, the ingenuity and the resourcefulness that have long characterized the American business and legal community." In his 1983 Year-End Report on the Judiciary, the Chief Justice called upon the bar and the bench to actively seek alternatives to the high cost of litigation and the ever increasing case overload problem, saying in part:

> Experimentation with new methods in the judicial system is imperative given growing caseloads,

> delays, and increasing costs. Federal and state judges throughout the country are trying new approaches to discovery, settlement negotiations, trial and alternatives to trial that deserve commendation and support. The bar should work with judges who are attempting to make practical improvements in the judicial system. Greater efficiency and cost-effectiveness serve both clients and the public. Legal educators and scholars can provide a valuable service by studying new approaches and reporting on successful innovations that can serve as models for other jurisdictions, and on experiments that do not survive the scrutiny of careful testing.

The great demand on our adversary system can be best relieved by diverting cases to a less cumbersome and costly process, which in turn can preserve the trial process for those cases which are absolutely hard-core, durable, trial-bound cases. The Summary Jury Trial, among other alternative dispute resolution techniques, is a proven process through which this result can be accomplished.

ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

The purpose of any dispute resolution technique, including Summary Jury Trial, is the settlement of disputes. The judicial system has come to rely on a steady flow of case settlements in order to achieve a measure of docket control. While lawyers are trained in the techniques of conflict rather than in dispute management, they nonetheless settle a large number of cases. Were they trained to think in terms of techniques which facilitate the likelihood of voluntary resolution, fewer cases would be filed and a greater portion of those which are filed would be settled.

Given the very nature of the adversary system, however, it is difficult for a lawyer to play the role of creative negotiator, and the judge is often the only one who can effectively initiate serious settlement discussions. Failure to achieve an agreeable compromise at a settlement conference, however, does not mean that a case cannot be settled. The use of so called "alternative dispute resolution techniques" can be effectively used to reach settlements in a great number of civil disputes. There are a number of alternative methods in use today, many of which have proven effective in settling cases prior to trial and, thereby, reducing the docket and the expense of litigation. One alternative is private or contractual arbitration. This is the submission of a disagreement to one or more impartial persons with the understanding that the parties will abide by the arbitrator's decision. Implementation of this procedure in the federal system is by virtue of The Federal Arbitration Act, 9 U.S.C. §§1-14, which was designed to ease congestion in the court system, to speed up resolution of disputes, and to afford a more economical means of disposing of cases. The use of arbitration extends beyond the federal system as evidenced by the fact that the American Arbitration Association alone administers more than 40,000 cases a year.

Court-annexed arbitration has been utilized in several district and state courts. Often a local rule requires that certain classes of cases shall be referred to arbitration. The arbitrator's judgment on the merits is entered as the judgment of the court unless, within prescribed time limits, a party rejects the award by filing a demand for a trial de novo.

Mediation and conciliation mechanisms bring the parties together to discuss settlement under the auspices of a neutral third party. These methods have received considerable attention and have been in active use in the Detroit area, the birthplace of our present pretrial system, where they have been shown to be very effective. A number of courts, particularly at the state level, have a local rule providing for mediation panels for certain categories of cases.

Private judging is used with increasing frequency to resolve corporate litigation. In this procedure the parties present an abbreviated version of their case to a privately-retained third party. In California, the Code of Civil Procedure §638 authorizes a procedure commonly known as "rent-a-judge" that permits the parties to petition the court for appointment of a mutually-selected referee who is paid by the parties.

Neutral experts and special masters, who can be appointed pursuant to Fed. R. Evid. 706, Fed. R. Civ. P. 53 or the inherent power of the court, can have a mediational effect and foster settlement. Judge Robert C. Zampano, of the District of Connecticut, has utilized such experts in hundreds of cases, finding them particularly effective in construction cases. I have appointed a neutral economic expert in a major price-fixing class action against grocery retailers in northern Ohio. The expert was able to effectively penetrate the mass of data presented for calculation of damages, and was instrumental in effectuating the $20 million settlement.

Related to the use of neutral experts are special masters, appointed to facilitate the just, speedy, and inexpensive determination of cases which involve complex issues or multiple parties. Recently, I have employed special masters to assist in establishing an effective case management plan in the approximately 100 asbestos-related actions in the Northern District of Ohio, which have been consolidated on my docket. The use of special masters in complex matters can greatly improve the efficiency, and thereby the cost savings, of litigation.

The mini-trial, developed by Professor Eric D. Green, of Boston University Law School, is a hybrid that merges certain characteristics of adjudicative, arbitral, mediational and negotiational processes into a unique creation. The purpose of the mini-trial is to reveal the theories, strengths, and weaknesses of opposing positions to the two parties as an aid to the resolution of the dispute. The goal of the mini-trial is to effect speedy cost-effective resolution of the dispute by narrowing the dispute, promoting a dialogue on the merits of the case rather than just the dollars, and reconverting what has become a typical lawyers' dispute back into a businessman's problem by removing many of the legalistic, collateral issues in the case. The mini-trial, used primarily by corporate litigants involved in commercial disputes, is a private trial, usually conducted before a neutral advisor, and voluntarily undertaken by the parties outside of court. It is a flexible proceeding which may be applied to a case in a variety of forms, including utilization of a privately paid jury.

The mini-trial and the Summary Jury Trial have frequently been confused. In fact they are two separate and distinct processes. The Summary Jury Trial is a court-annexed, court run process. The mini-trial is a voluntary, highly-private and non-binding procedure, consisting of informal, summary presentations by the lawyers and experts for each party to the dispute of its best case, followed by rebuttal and questions concerning those presentations. The mini-trial is conducted before top management representatives (with settling authority) of each party. It is presided over by a jointly selected neutral advisor or moderator who may have specialized subject expertise. If necessary, after the mini-trial the neutral advisor will apprise the parties as to the strengths and weaknesses of their respective cases.

Telecredit, Inc. v. TRW, Inc., was the first widely publicized application of the mini-trial concept. It involved a legally and technically complex patent infringement case between Telecredit, Inc., the owner of a number of patents relating to computerized check verification and charge authorization systems, and TRW Inc., the manufacturer of a number of such systems for banks and retail outlets. In nearly three years of litigation the case had consumed several hundred thousand dollars in legal fees on both sides and still no trial date had been set. Using former United States Court of Claims Judge James Davis as a privately-hired neutral advisor, the parties reached a settlement after only two days of presentation time of what had been a long and bitterly fought lawsuit.

Automatic Radio v. TRW, Inc. involved the merchantability of high-technology electronic equipment supplied as a component part to a manufacturer for inclusion in a retail product. Because of the possibility of insurance coverage, representatives of the defendant's casualty insurer participated at the mini-trial as observers. Former judge, Professor Irving Younger, presided as the neutral advisor and assisted participating management in settling the case the same day the mini-trial concluded. This was after five years and over one million dollars in litigation time and expense (with the prospect of at least this much additional cost if the case went to trial).

Each of these alternative methods offer the prospect of settlement of disputes, thereby avoiding actual trial and related costs.

SUMMARY JURY TRIAL

It is clear that settlement of cases prior to trial provides a cost savings in terms of litigation. One aspect of this savings is the elimination of the need to empanel a jury. Some cases, however, are not amenable to settlement through the usual pretrial methods of dispute resolution, or the alternative methods mentioned above. There may be a variety of reasons for this inability to settle. Litigants may refuse to accept a compromise because emotionally they need a "day in court" to tell their story. Absent the opportunity to hear both sides of the case presented to the finders of fact, a lawyer and his client may be unable to objectively recognize the weaknesses in their position. The lawyer and his client may believe they can "pull off" a weak case if only they can get it in front of a jury. These reasons, among others, act as barriers to settlement; barriers which often result in protracted litigation and expense.

The Summary Jury Trial (SJT) provides a means by which to decimate these barriers to settlement. Alternatively, SJT can aid in streamlining jury trials so that the trial process undergoes a more efficient use of time.

While each of the above-mentioned alternative dispute resolution devices offer the prospect of resolution of cases prior to full trial, and can prove useful in the particular circumstances for which they have been fashioned, the SJT is inherently different. This difference initially manifests itself in the fact that SJT is the only alternative dispute resolution technique which utilizes the age old jurisprudential concept of trial by jury. It is this concept, the expression of opinion by a jury of peers, which has molded our judicial system and which permits the parties to believe that their story has been told, and a decision reached. No other alternative allows for the use of this basic foundation of our present system.

Initiated in 1980, SJT is counsels' presentation to a jury of their respective views of the case and the jury's advisory decision based on such presentations. It is a flexible pretrial procedure that aids appreciably in the settlement of trial-bound cases.

The SJT can be an effective predictive process for ascertaining probability of results. It is my perception that the sole bar to settlement in many cases is the uncertainty of how a jury might perceive liability and damages. Such uncertainty often arises, for example, in cases involving a "reasonableness" standard of liability, such as in negligence litigation. No amount of jurisprudential refinement of the standard of liability can aid the resolution of such cases. Parties' positions during settlement negotiations in cases of this type are based on an analysis of similar cases within the experience of counsel as to juries' determinations of liability and findings of damages. Such comparison is usually of little value, however, as parties tend to aimlessly grope toward some notion of a likely damage award figure upon which to base their negotiating positions. The parties and the Court may become frustrated in cases, especially where neither party wants to fully try the case on the merits and the only roadblock to a meaningful settlement is the uncertainty of how a jury might perceive liability and damages.

The half-day proceeding is designed to provide a "no-risk" method by which the parties may obtain the perception of six jurors on the merits of their case without a large investment of time or money. The proceeding is not binding and in no way affects the parties' rights to a full trial on the merits. SJT is a predictive tool that counsel may use to achieve a just result for their clients at minimum expense.

After preparation and presentation of the case at an SJT, the possibility of a settlement becomes much more real to both sides. Unreasonable demands and offers are reevaluated, and mutually agreeable compromises are worked out in light of the jury's findings.

FOUNDATION FOR SJT

The Summary Jury Trial is firmly rooted in the Federal Rules Of Civil Procedure. In light of Fed. R. Civ. P. 1, SJT is within the court's pretrial powers pursuant to Fed. R. Civ. P. 16(a)(1), (5), (c)(11), and the court's inherent power to manage and control its docket.

Rule 1 of the Federal Rules of Civil Procedure states that the Rules, "shall be construed to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Rule 16(a), concerning pretrial activities, states, "In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as (1) expediting the dispositon of the action . . . and (5) facilitating the settlement of the case." Fed. R. Civ. P. 16(a)(1) and (5).

Furthermore, the Rules recommend that settlement be discussed, as well as potential alternatives to trial. Newly adopted Fed. R. Civ. P. 16(c)(7) and (11) provide that "[t]he participants at any conference under this rule may consider and take action with respect to . . .(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute . . . and (11) such other matters as may aid in the disposition of the action." Fed. R. Civ. P. 16(c)(7) and (11).

The SJT process recognizes the importance our judicial system places on decisions rendered by lay jurors. This is consistent with Fed. R. Civ. P. 39(c), which provides for an advisory jury in cases not triable to a jury as of right. Additionally, use of the SJT is consistent with Fed. R. Civ. P. 83, which provides in pertinent part, "[i]n all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules." Fed. R. Civ. P. 83.

In the Northern District of Ohio, the SJT has been specificially provided for by Local Rule 17.02, a copy of which appears as Appendix A to this Report, and which states:

> The Judge may, in his or her discretion, set any appropriate civil case for Summary Jury Trial or other alternative method of dispute resolution, as he or she may choose.

THE SJT PROCESS

The SJT may be conducted by a judge or by a magistrate upon assignment from the court. It is essential that a person of authority conduct the proceeding, in a courtroom, in order to maintain the aura of actual trial.

For SJT to be truly beneficial, the case must substantially be in a posture for trial. Discovery must be complete and there must be no motions pending. A pretrial conference held shortly before the case is assigned to SJT is most helpful in determining the posture of the case. Here, the Court hears any motions _in_ _limine_, and explores areas of possible objections and rules on them. The SJT Handbook [Appendix B] is distributed at the conference.

Experience has shown that if the judge penetrates the "guts" of the case at this conference, counsel can be given appropriate guidance for an SJT proceeding that will flow without formal objections being interposed. In the event that the case is not in proper posture for SJT, the parties and the Court can establish a schedule to prepare the case for SJT.

No later than three (3) working days before SJT, counsel must submit a trial brief on issues of law and a set of proposed jury instructions. It is for the effect on the litigants that SJT is performed, thus, clients are expected to attend SJT. Leave of Court must be sought to excuse attendance of a party. It must be remembered that clients' awareness of the jury's perception is as important as that of counsels'.

Ten potential jurors are obtained for _voir dire_. Prior to that process, the potential jurors are given a brief description of the case, the parties and attorneys involved. This is done by a law clerk or deputy clerk, who then distributes a short juror profile questionnaire [Apendix C] which each potential juror fills out and returns. Basic information is revealed on these forms, thus releaving counsel and the court from having to obtain the information from each potential juror during voir dire. A copy of each completed questionnaire is given to the attorneys and to the presiding judicial officer.

A brief voir dire examination by the court then follows. Counsel are usually permitted two challenges to the venire, and the case is ready to be heard by a six-member jury.

The proceedings are not open to the public. Unless specifically ordered by the Court, the proceedings are not recorded. Counsel may, if so desired, arrange for a court reporter to be in attendance.

All evidence is presented through the attorneys, who may incorporate arguments on such evidence in their presentations. Opening and closing arguments are amalgamated with a narrative overview of the trial proofs. Generally, one hour of time is allotted to each side in the litigation, in which to present their case to the jury. This time period may be broken up so that rebuttal time is available if desired.

No testimony is taken from sworn witnesses. Counsel simply summarize the anticipated testimony of trial witnesses and are free to present exhibits to the jury.

While counsel may employ any effective and persuasive advocacy techniques, counsel are limited to presenting representations of evidence that would be admissible at trial. Representations of facts must be supportable by reference to discovery materials, including depositions, stipulations, documents, and formal admissions, or by a professional representation that counsel has spoken with the witness and is repeating that which the witness stated. Additionally, statements, reports, and depositions may be read from, but not at undue length.

Formal objections are not encouraged. It is hoped that most objections would have been dealt with at the pre-SJT conference. Nevertheless, in the event counsel overstep the bounds of propriety on a relevant aspect of the case, an objection will be entertained. If such an objection is well-taken, the jury will be admonished.

Following counsels' presentation, the jury is given an abbreviated charge and then retires to deliberate. The jury may return a consensus verdict or separate, individual verdicts that list each juror's opinion of liability and damages [Appendix D]. While consensus verdicts are encouraged, separate, individual verdicts do afford counsel substantial insight into the individual juror's perceptions and may suggest an equitable basis for settlement.

Again, it should be noted that counsel may stipulate that a consensus verdict will be deemed a final determination on the merits and that judgment may be entered by the Court. This, however, is optional. Additionally, counsel may stipulate to any other use of the verdict that will aid in resolution of the case. It is this flexibility in process which increases the potential of the SJT.

SELECTION OF CASES FOR SUMMARY JURY TRIAL

Flexibility is also the key in selecting cases for SJT. Generally, it is used in cases where settlement cannot be achieved because of differing perceptions of how a jury will evaluate the evidence. As illustrated above, the process can provide an insight into the decision of a jury.

The use of the SJT is not limited to negligence actions, nor to actions which have only two parties. While it has proven effective in these kinds of cases, it has also been successfully utilized in litigation involving multiple parties, and in such substantive areas as products liability; personal injury; contract; age, gender, and race discrimination; and antitrust.

The amount of relief for which plaintiff prays is not a limiting factor. In one personal injury action, a settlement in excess of $400,000 was achieved, and an antitrust case settled for $2.5 million after another SJT. In two minor personal injury cases, plaintiffs decided to dismiss after unfavorable results in SJT rather than pursue a futile and expensive venture.

All jury cases, whether simple or complex, may be amenable to SJT. Effective pretrial conferencing is the best method for determining precise suitability for SJT.

RESULTS IN THE NORTHERN DISTRICT OF OHIO

As a result of using the SJT process in the Northern District of Ohio, cases have shown movement on the docket and full and expensive jury trials have been avoided. Recent statistics indicate that over 90% of the 88 cases selected for SJT thus far, have settled prior to full trial [Table I].

SUMMARY JURY TRIAL STATISTICS

January, 1984

Number of cases selected and assigned for SJT	88	
Number of SJT's held:	49	(55.7%)
Number of cases set for SJT, but settled before SJT held:	39	(44.3%)
	88	(100%)
Of those cases for which a SJT was held:		
Number of cases settled after SJT:	45	(92%)
Number of cases going to full trial after SJT:	1	(2%)
Number of cases settled during full trial after SJT:	1	(2%)
Number of cases still in settlement negotiations after SJT:	2	(4%)
	49	(100%)

TABLE I

Of those cases initially selected and set for the process, 44.3% have settled before going through the actual SJT. I attribute a good portion of this figure to those cases which require that extra "push" toward settlement, which setting definite dates sometimes provides. Still, 55.7% did go on to SJT, indicating that a majority of the cases selected for the process are durable, trial-bound cases. It is these cases which the SJT hopes to "short-circuit" prior to actual trial.

In fact, this has been the case. Of 49 SJT's held thus far, 45, or 92%, have resulted in settlements. One case did proceed to a trial de novo, and another settled during its jury trial. Two cases, which were processed through SJT, are still in settlement negotiations.

In addition to the savings generated to individual litigants by avoiding a protracted jury trial, the success rate of the SJT has had a significant effect on the use of the jury, and related costs.

According to the 1983 Grand and Petit Juror Service, prepared by the Administrative Office of the United States Courts, the twelve month period ending June 30, 1983, saw 640,577 prospective petit jurors called for jury duty, with only 30.1% actually chosen to serve. In the federal system, each juror is paid $30 a day plus 20 cents a mile for transportation, resulting in an average daily cost of $44.00. In 1983, the federal court system had 21,060 civil jury trial days at an approximate cost to the government of $16 million. The average cost per jury trial day in 1983 was $758 and the average civil jury trial lasted a little over four days.

When we consider that an SJT usually takes one half to one day to complete, the savings aspect of the SJT becomes clear. First, jurors are only used for one day, as compared with the 4 plus day average noted above. Further, only ten prospective jurors are called, thereby eliminating a long line of unused, challenged, but compensated, jurors.

In the Northern District of Ohio, where the SJT has been in use since 1980, the average cost of a petit juror has been $43.00 per day, and the average jury trial lasts 5 plus days. A look at the figures involved [Tables II-III] shows that the savings associated with the processing of 49 Summary Jury Trials is $73,702.00, or roughly $1,504.12 per case. This savings is based on not requiring jurors to serve the total average number of days for a full jury trial plus the reduced number of potential jurors initially required for voir dire.

Additionally, SJT offers the prospect of an additional savings, and increased juror utilization, by "recycling" jurors who have been challenged, or have not been selected, in other venire in the courthouse. As these jurors are going to be paid whether they are utilized or not, it makes sense to attempt to have them serve whenever possible. The SJT permits this utilization to occur, particularly where unused jurors are available from morning trial proceedings and the SJT is set for the afternoon. While it is difficult to implement the coordination of events required to proceed in this manner, the potential savings and juror utilization which would result may commend itself to deeper investigation of such coordination.

SUMMARY JURY TRIAL COST ANALYSIS

The 1983 Grand and Petit Juror Service, issued by the Administrative Office, states that the average cost per day for a petit juror in the Northern District of Ohio totals $43.00.

49 Summary Jury Trials have been held to date. Based on a pool of 10 potential jurors, the costs and savings have been as follows:

490 jurors called at $43.00 per juror:	$21,070.00
Jury pools (requiring 18 potential jurors) were subsequently called for 2 cases, with those jurors serving one and three days respectively. These costs totaled:	$ 2,150.00
Actual jury cost of achieving settlement in 49 SJT cases:	$23,220.00

TABLE II

COMPARISON OF COST-SAVINGS -- SJT AND FULL JURY TRIAL

	Each Case	49 Cases
First day costs of regular jury, based on a pool of 18 jurors at $43.00 per day:	$774.00	$37,926.00
One day cost of a summary jury, based on a pool of 10 jurors at $43.00 per day:	$430.00	$21,070.00
Savings in first day costs alone, *if* each full trial lasted *one* day, and no SJT proceeded to full trial:	$344.00	$16,856.00
+		
Based on the 1983 average of how long each case would have taken in a full jury trial, 196 subsequent jury days were saved, giving an additional estimated savings of (196 x 7 jurors x $43.00):		$58,996.00
		$75,852.00
Less costs of 2 SJT cases requiring full jury panels:		$ 2,150.00
ACTUAL JUROR COST SAVINGS FOR 49 SUMMARY JURY TRIALS:		$73,702.00

TABLE III

SJT USE IN OTHER JURISDICTIONS

Although only in existence for four years, the SJT has seen steady growth in jurisdictions outside of the Northern District of Ohio. This growth may be attributed, in addition to the cost savings and positive effect on the docket, to the inherent flexibility of the process. The Rules which have been adopted in the

Northern District of Ohio are not absolute rules to be followed in every case, or in every court. Variations of the process should be, and have been, encouraged, so as to adapt the SJT to particular circumstances. I believe that this fact has played a significant role in the acceptance of the SJT as a final step in the pretrial mechanism.

For example, Chief Judge James Battin, United States District Judge for the District of Montana, has adopted a Standing Order providing for the use of SJT [Appendix E]. Based on the Rules adopted in the Northern District of Ohio, Judge Battin has made two slight modifications to the process, which he feels provides for a more effective SJT in his court. First, each side's time is to be divided into opening statments, case-in-chief, and closing arguments. The parties may divide "their alloted time among the three trial segments as they see fit." Plaintiff is permitted a final rebuttal if he has any remaining time. Second, at the conclusion of counsels' presentations, the jurors are asked if they have any questions they would like to direct to the attorneys.

Other jurisdictions which have been using the SJT process include the District of Massachusetts, where Judge John McNaught adopted the procedure in 1981. Thus far, he has held over 50 SJT's, with promising results.

In the Eastern District of Pennsylvania, Judge Norma L. Shapiro has found the SJT particularly amenable to complex cases, reporting that one potentially complicated and protracted case settled only as the result of an SJT.

Judge Lee R. West, United States District Judge for the Western District of Oklahoma, invited me to jointly preside over a major price-fixing case in the chemical industry, in which settlement had proven elusive. Together, we were able to achieve settlement in one day of a case that would have consumed an estimated 2 1/2 months of trial time. The federal judges in Oklahoma City have now adopted a local rule providing for SJT, and Judge West anticipates frequent use of the process [Appendix F].

In Michigan, SJT has met with great success. Judge Richard A. Enslen, United States District Judge in Kalamazoo, has effectively used the SJT in his court. Judge Douglas W. Hillman, United States District Judge in Grand Rapids, heard of the procedure from Judge Enslen. He invited Judge Enslen to conduct an SJT with him in a case involving the breach of an airplane brokerage agreement. That case settled [Appendix G].

Chief Judge Wendell A. Miles, United States District Court in Grand Rapids, also reports success with the SJT [Appendix G]. He writes,

> I believe in the [Summary Jury Trial] under the right conditions. It can and will reduce the number of trials and, quite obviously, the number of appeals.
>
> The presentation of the * * * concept by Judge Enslen on March 11, 1983 to upwards of 200 trial lawyers in the Western District of Michigan (local chapter of Federal Bar Association) was so well received that attorneys are welcoming it, rather than resisting it, as a worthwhile "tool" in resolving disputes.

Judge Stewart A. Newblatt, United States District Judge in Flint, Michigan, has met with success in the use of the SJT in a case in which physicians and county officials were involved [Appendix H]. Judge Newblatt has effectively utilized the procedure in other cases as well.

In Cincinnati, Judge S. Arthur Spiegel, United States District Judge for the Southern District of Ohio, is currently using SJT's to bring about settlements in complex asbestos litigation [Appendix I]. He reports that the process has been effective in one, and possibly two, of three cases, which were set for SJT. The third case settled upon the "threat of a Summary Jury Trial."

Judge James Carrigin, United States District Judge in Denver, Colorado, has implemented the SJT in his courtroom, as has Judge Jose A. Gonzalez, Jr., United States District Judge in Ft. Lauderdale, Florida, and Judge Richard P. Conaboy, United States District Judge in Scranton, Pennsylvania.

Interest in the process has increased, and I continue to receive requests for information from judges around the country and members of the bar. For example, Chief Judge Samuel P. King, of the United States Disrict Court for Hawaii, has expressed interest in instituting the SJT in Honolulu. Further, the interest cuts across the Federal-State judicial line, as interest in the process has been expressed by state court judges from Florida to California.

CONCLUSION

Creative utilization of alternative dispute resolution techniques will provide the American people with cost-efficient, time saving methods to resolve disputes. Effective implementation of these methods will leave the adjudicative process available for the quality processing of high impact cases and provide resolution by means other than full trial, without compromising an individual's rights and dignity.

The Summary Jury Trial, unique among the alternatives presently available, provides a great impetus to settlement of "durable" cases. This capsulized trial procedure places parties in a favorable psychological posture for settlement by eliminating traditional obstacles to settlement. The parties sense the strengths and weaknesses of their respective cases, observe juror reactions to conflicting evidence, and derive the satisfaction of having their story heard.

Because it is effective, the cost savings associated with the SJT cannot be dismissed or ignored. Clearly, where the process is implemented, potential full jury trials do not take place. This results in a savings in terms of cost to the litigants and juror costs to the judicial system. Additionally, fewer potential jurors are required for the SJT, than in an ordinary jury trial, resulting in an immediate savings in juror costs, as well as more efficient utilization of available jurors.

The SJT process forces the parties to take a hard look at their respective cases, and to evaluate their positions with respect to going through the process.

Frequently, parties settle or voluntarily dismiss their suits upon their being set for an SJT.

Additionally, the SJT process allows for the effective use of the magistrate, who may preside over the SJT upon assignment. This provides direct relief from scheduling problems, which have arisen due to the current influx of litigation upon the courts.

In sum, the Summary Jury Trial serves to enhance the dispositional power of a judge. It is a non-coercive, "no-lose" alternative, which provides needed enlightenment that assists the parties in resolving their disputes without full trial. The process promotes savings and efficiency throughout our judicial system. It is the ideal no-risk approach to precisely those items of concern that presently confront the members of the Committee, the courts, the bar, and our society as a whole as they endeavor to deal with the judicial system. It is my hope that our explorations in this rapidly developing field of alternative methods will serve to enhance the quality of the administration of justice.

Respectfully submitted,

Thomas D. Lambros

Thomas D. Lambros
United States District Judge
Northern District of Ohio
Cleveland, Ohio

January, 1984

ALTERNATIVE METHODS OF DISPUTE RESOLUTION

SELECTED REFERENCES

1. Brink, David. "Improving Our Justice System Through Alternatives," 68 Am. Bar Assn. Journal 384 (April 1982).

2. Cooke, Hon. Lawrence H. "The Highways and Byways of Dispute Resolution," Kentucky Bench and Bar, October 1981 (reprinted with the permission of St. John's Law Review, Volume 55, Book 4).

3. Coulson, Robert. Business Arbitration - What You Need To Know, Second Edition (1982); American Arbitration Association, 140 West 51st Street, New York, New York 10020.

4. Coulson, Robert. "Construction Arbitration Around the World," New York Law Journal, August 19, 1982.

5. Coulson, Robert. "Rent-A-Judge: Private Settlement for the Public Good," Vol. 66, No. 1 Judicature 7 (June-July 1982).

6. Goldberg, Stephen B. and Brett, Jeanne M. "An Experiment in the Mediation of Grievances" (October 1982) Northwestern University School of Law, 357 E. Chicago Ave., Chicago, Illinois 60611 and Graduate School of Management, Evanston, Illinois 60201.

7. Green, Eric D., Ed. The CPR Legal Program Mini-Trial Handbook (1982); Matthew Bender, New York, New York.

8. Hoellering, M.F. "The Mini-Trial," Vol. 37, No. 4 Arbitration Journal 48 (December 1982).

9. Jackson, Neal A., Assoc. Ed. "Alternative Dispute Resolution: Non-Binding Summary Jury Trials," Vol. 6, No. 3 Litigation News 5 (April 1981).

10. Jacoubovitch, M. Daniel and Moore, Carl M. Summary Jury Trials in the Northern District of Ohio, Federal Judicial Center (May 1982).

11. Lambros, Judge Thomas D. Handbook and Rules of the Court for Summary Jury Trial Proceedings, Third Edition (1983).

12. Lambros, Judge Thomas D. and Shunk, Thomas H. "The Summary Jury Trial," Vol. 29, No. 1 Cleveland State Law Review 43 (1980).

13. Lind, E. Allan and Shapard, John E. Evaluation of Court-Annexed Arbitration in Three Federal District Courts, Federal Judicial Center (March 1981).

14. Parker, D.M. and Radoff, P.L. "The Mini-Hearing: An Alternative to Protracted Litigation of Factually Complex Disputes," Vol. 38, No. 1 Business Lawyer 35 (November 1982).

15. Ryan, J.P.; Lipetz, M.J.; Luskin, M.L.; and Neubauer, D.W. "Analyzing Court Delay-Reduction Programs: Why Do Some Succeed?" Vol. 65, No. 2 Judicature 58 (August 1981).

16. Slonim, Scott. "One Judge's Invention: Summary Jury Trials," January 1981 Am. Bar Assn. Journal 24.

17. "Chief Justice Burger Calls on Bar to Pursue Alternatives to Litigation," Vol. 14, No. 2 The Third Branch 1 (February 1982).

18. Corporate Dispute Resolution Institution: Alternative Means for Cost-Effective Settlement of Litigation (November 1982); Northwestern University School of Law, 357 E. Chicago Avenue, Chicago, Illinois 60611.

19. Dispute Management - A Manual of Innovative Corporate Strategies for the Avoidance and Resolution of Legal Disputes (1980); The Center for Public Resources, Inc., 680 Fifth Avenue, New York, New York 10019.

20. "Inside: The Judiciary," The Washington Post, October 14, 1983.

21. "Judges Experiment with Witnessless Trials to Cut Into Case Backlog," The Grand Rapids Press, January 27, 1983, Page 4C.

22. "Jury Trials That Can Save Time and Money," Business Week, July 20, 1981.

23. "Make-believe jury trials," California Lawyer, January, 1984, Pages 21-23.

24. "Mock-Trial System Cuts Caseload in Federal Court; Idea Spreads," The Knoxville News Sentinel, February 22, 1981, Page B-9.

25. "Nonbinding Minitrials," The Wall Street Journal, June 24, 1983, Page 1.

26. "Summary Jury Trials," Text of speech delivered by Joan M. Hall, Chairman of the American Bar Association Section of Litigation and

Partner, Jenner & Block, Chicago, Illinois, to the Spring Conference of Florida Circuit Court Judges at Orlando, Florida on March 22, 1983.

27. "Summary Jury Trial Innovation," Vol. 12, No. 11 The Third Branch 1 (November 1980).

28. "Summary Trials tested here as way to save time and money," The Cleveland Plain Dealer, April 6, 1980, page 30A.

CONSOLIDATED CASES

Senator SPECTER. One final question. I had referred to the legislation which I have proposed on consolidation of a complex trial, civil antitrust cases actually, in Bill 2260. The current practice is that there is consolidation on pretrial matters and there is some practice in a limited number of jurisdictions, as I understand it, to have consolidation for trial. But there is no authority for that, to my knowledge. This proposed legislation would provide authority for consolidation of civil antitrust cases for trial, the multidistrict approach.

Would you think that would be a good idea, Judge Clark, or Judge Harvey?

Judge CLARK. I could start off, Judge.

I might say I am not familiar with the details of the legislation that you proposed, Senator, so it may be that there is a reason why you have not made a reference to the multidistrict function. We have for many years now consolidated antitrust cases, airplane accident cases, within a single district both for trial and disposition of nationwide defendants.

I am thinking of one of the toughest records that I ever picked up as an appellate judge was in connection with the corrugated board case that was tried in the Southern District of Texas. It had defendants from all over the United States involved there, and a much broader class of plaintiffs that had been injured, companies that bought corrugated board for packaging their products. It was a monstrous big record and a tremendous lawsuit.

Senator SPECTER. You had consolidation for trial as well as pretrial under the multi-district rule?

Judge CLARK. Yes, sir.

Senator SPECTER. My understanding is that yours obviously is one of the jurisdictions that does it, but I believe that it is not done in most of the Federal jurisdictions. At least that is the research which has been cited to me.

The purpose of the statute would be to provide authorization for it everywhere.

Judge CLARK. I would say that that type of consolidation is a very good thing. Any way that you can expedite the process and reduce the number of trials about one set of facts is going to benefit the courts just as much as the reduction of jurisdiction would, or along the same lines.

Judge HARVEY. I would say that I am particularly familiar with the swine flu type cases, which there had been multidistrict pretrial proceedings conducted at very great length because in all they represented several thousand claimants involved.

PRETRIAL PROCEEDINGS

The important thing to recognize I think is that the major savings is in the pretrial proceedings. There may be some instances where if it were discretionary, that being able to consolidate the trial as well would be helpful. But the major savings is in the pretrial proceedings because it is at this juncture where the depositions of the doctors and the experts and others are taken, which are in turn used in the individual fact situations. So that the doctor from Johns Hopkins or from Philadelphia or from New York or California doesn't have to appear up in little Bay City, Mich., or something. That is all done by consolidation and it is all used and read by deposition at the time of trial.

It has been very helpful and a very great savings to the U.S. Government in the process of consolidating the pretrial proceedings in these cases.

Now there are some instances in multi-district litigation where the fact situations are the same, and in those cases the discretion to consolidate the trial could be very helpful. But I would think, Senator Specter, that in the majority of those cases the big savings is going to be found, and it has been to date, in the pretrial proceedings.

Judge CLARK. Could I go back to one question that I did not complete the answer on. This may be of interest to you, too.

TIME LIMITS

We were talking about speeding the disposition of cases, and I know your opinion on over-long, particularly over-long appellate court opinions. I would say that I agree with you. We do take steps within the range that we can do so to persuade judges not to write as long in our circuit.

Senator SPECTER. How do you do that?

Judge CLARK. The best thing we do is a rule that we have adopted that any opinion over 6 months old or any case under submission for more than 6 months begins to be managed by a backlog proctor. You are expected to get your decisions out in 3 months. If you don't qet it out in 6 months, the backlog proctor begins working with you.

Senator SPECTER. Is this the circuit court?

Judge CLARK. This is the circuit court. This is only in the Fifth Circuit. I don't know about others, except I know from Justice Powell's remarks there are several ways courts are acting in this field. The 11th was part of the Fifth until the two circuits were split apart. So I do know also that Judge Godbold is pursuing in the 11th circuit a very similar program. But at the end of 9 months, if that opinion is still outstanding, then the case is reassigned. This is a very great disgrace to a judge to be working 9 months on a case and then——

Senator SPECTER. How long has that been done?

Judge CLARK. We got up to the lick-log several times and the opinion always managed to get out under the wire.

Senator SPECTER. That is what happens when there are time limits.

Judge CLARK. In one instance last year we relieved the judge of a subsequent sitting, which is also a penalty that is provided for not getting the opinion out. But the court does take these steps.

We have imposed a 6-month goal on ourselves with regard to criminal cases which do not enjoy a Speedy Trial Act protection after they get in the Court of Appeals. But that is 6 months from the time of the notice of appeal, which is a very constricted program. We have not yet gotten down to the 6 months, though we continue to work for it.

APPEAL OF ORDER FOR EXECUTION

We have also done the same thing that Justice Powell mentioned here with regard to death penalty cases, which are becoming an increasing problem for Courts of Appeals, of starting to manage these cases on the day that the order comes out for execution. On the day that that order comes out, we begin to take control of that case, or that potential case, and manage it up to the time that it comes under our court's jurisdiction.

Senator SPECTER. The order for execution in the State courts?

Judge CLARK. Yes, sir.

Senator SPECTER. Because you know it is coming.

Judge CLARK. It has never failed yet that we get the appeal. Sometimes we get it an hour beforehand. Sometimes we get it several days. Sometimes we get it several weeks. But the difficulty was that when this deluge first started to hit us, we would get this 11th-hour request to stay the State court's order. The execution might have been set 2 or 3 months prior. But when the execution hour was set for midnight, at 5 on Friday afternoon in would come the lawyer with his papers.

Senator SPECTER. How do you control it?

Judge CLARK. Now we begin to take it——

Senator SPECTER. You call them up and say, "If you are going to file an appeal. do it soon"?

Judge CLARK. No. We work with the State Attorneys General. We get them to advise us of what cases are likely, what orders are likely to be set. As soon as the execution date is set, we contact the potential attorneys in the case, who don't always turn out to be the ones who brought it to our court, because frequently the lawyer who tries the habeas case in the district court turns out to be incompetent counsel in view of the counsel that replaces him on appeal. But this is a problem of management, district or State.

Senator SPECTER. How do you handle it? Do you call up the people you think will be the lawyers and say—what do you say?

Judge CLARK. We don't ask them to file. We just tell them that there is a rule, and if they file, they have to file so many copies of everything that has happened. The State court judgment was something we couldn't get hold of instantly. They are now required to file enough copies of the State court judgment where the State court reasons out its order.

Senator SPECTER. Do you set forth the time when they have to file by?

Judge CLARK. No, sir.

Senator SPECTER. You can't do that.

Judge CLARK. We don't think we can do that. But we encourage them to file as promptly as they can. As I say, they know we have begun to manage it.

Senator SPECTER. You don't think you start litigation in that way, do you? You don't encourage it?

Judge CLARK. I have absolutely no idea that we do. I think we don't start a thing. I don't know whether this will be the continued practice because more and more of these things begin to get resolved and get to be frivolous, particularly on successful petitions to the courts on death penalties.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Senator RUDMAN. Thank you, Senator Specter.

Judge Clark and your colleagues, we thank you very much. I would only state obviously at some point we are going to have to deal with what is the issue underlying most of the discussions, as Senator Specter said today. In my view, that is the trivialization of the U.S. district courts with cases that should not be before them. With my 20-some years, I saw the Federal court practice go from what was an excellent practice of important issues to things that just never should have been there. Aside from all of the laws that we have passed and that ought to be there, there are things that ought not to be there.

I don't think we are going to solve this problem with all kinds of quick fixes until we solve the underlying problem.

Thank you very much.

Judge CLARK. Thank you, Senator.

SUBMITTED QUESTIONS

Senator RUDMAN. The committee has additional questions which will be submitted for your written response.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

QUESTION:

Is there any way to reduce the cost of $3,145,000 for transcript costs? Why is this so high and what does it involve? Would electronic recording help to reduce this cost somewhat?

ANSWER:

Increased transcript costs reflect a higher volume of both the number of CJA appeals and pages transcribed per request. Higher costs are also likely to result from the more complex and extended multi-defendant cases which have been prosecuted in recent years. The fiscal year 1984 estimate of $3,145,000 for CJA transcripts is based upon an analysis of historical and projected workload and costs. The total number of transcript requests submitted and processed during fiscal year 1983 was 6.5% greater than fiscal year 1982; the average cost per transcript request rose by 11.1% during the same time period. Current estimates are that CJA assignments in the U.S. Courts of Appeals will be 9.1% greater in fiscal year 1984 than in fiscal year 1983. Our projection of a 6.8% increase in the cost of transcripts for fiscal year 1984 is therefore below our estimate of growth in appellate activity.

The Judiciary shares the concern of the Congress with regard to the increases which have been experienced in transcripts for defense services. The Administrative Office of the U.S. Courts has undertaken a study in order to analyze the reasons for these increases. The study will focus on the increase experienced between fiscal years 1982 and 1983 and will examine such areas as the use of accelerated transcript; the number of transcript requests which include opening and closing statements, voir dire, and jury instructions; and the number of requests and the costs associated with transcripts in multi-defendant cases. Data on the average length of a transcript is also being collected in order to determine the impact of a more complex Criminal Justice Act caseload on transcript costs. The findings of this analysis will be provided to the Criminal Justice Act and Budget Committees of the Judicial Conference for their review.

There is a potential for savings in CJA transcript costs as a result of the use of electronic sound recording equipment which can be realized through a decrease in the volume of transcript pages actually requested and prepared. The potential for savings results from the fact that by listening to the indexed tapes, attorneys will be able to identify the specific portions of the proceedings that need to be transcribed to cover the specific issues raised on appeal. Cost savings may be effected by eliminating unnecessary portions from the transcript order. We do not, however, anticipate that significant savings will be realized through a reduction in the volume of transcript pages ordered until the electronic sound recording program is established throughout the federal courts.

QUESTION:

You are requesting an additional $3,500,000 for postage and envelopes for bankruptcy courts, mainly for the purpose of mailing notices to creditors in bankruptcy cases. At page 10.10, you request a total of $8,199,000 for fiscal year 1985 for bankruptcy postage.

According to the revised rules of bankruptcy Procedure (Rule 2002), creditors who have not filed their claims in chapter 7 cases in accordance with Rule 3002(c) — usually 90 days — have no recognized stake in the estate. Thus, Rule 2002 allows the elimination of notices to such creditors to permit economies in time and expense.

- **Have the courts implemented the procedure to eliminate the unnecessary notices?**
- **Does your postage and envelope request reflect the elimination of unnecessary notices?**
- **How much savings has resulted from the procedural rule change?**

ANSWER:

Bankruptcy Rule 2002(h) continues the practice in effect since 1973 of granting bankruptcy courts the discretion to cease providing certain notices to chapter 7 creditors who have failed to file claims where it appears there will be a dividend to unsecured creditors. Whereas the former rule (FRBP 203(d)) permitted the exercise of this discretion after six months from the first date set for the first meeting of creditors, Rule 2002(h) has shortened the period to ninety days.

In approximately 90% of all chapter 7 cases there are no non-exempt assets to distribute to unsecured creditors, and therefore noticing is limited to the initial notice and the notice of discharge. In those cases where additional noticing is performed, clerks have established procedures over the past ten years to purge mailing lists of creditors where claims have not been filed or where notices have been found to be undeliverable. Bankruptcy clerks will continue to perform these monitoring tasks to keep noticing to a minimum. However, while clerks work to eliminate unnecessary notices we do not anticipate any additional savings in postage costs or materials since the authority for this practice has existed for ten years.

QUESTION:

What is the inflation rate for FY 1985 assumed by the Administrative Office in preparing the budget for the Judiciary? What savings could be gained if the rate is 4%, and in what accounts would this occur?

ANSWER:

An inflation rate of five percent was used in preparing the 1985 budget. The following amounts, by account, could be saved if the inflation rate is four percent:

Account	Savings
Court of International Trade	$ 7,000
Courts of Appeals, District Courts, and Other Judicial Services:	
Expenses of Operation and Maintenance of the Courts	653,000
Bankruptcy Courts, Salaries and Expenses	170,000
Space and Facilities	163,000
Court Security	187,000
Administrative Office of the United States Courts	59,000
Federal Judicial Center	46,000
TOTAL	$1,285,000

QUESTION:

At several points in the budget justification, mention is made of the need for funds consistent with the access charge decision of the Federal Communications Commission. What increases are projected in each appropriate account?

ANSWER:

The fiscal year 1985 budget estimates for the Federal Judiciary, as submitted, included $795,000 for anticipated telephone line access charges mandated by the Federal Communications Commission (FCC) as a result of the divestiture of American Telephone and Telegraph Company. Of this amount, $670,000 was requested in the appropriation "Expenses of Operation and Maintenance of the Courts," with the remaining amount of $125,000 requested under the "Bankruptcy Courts, Salaries and Expenses" account. The estimate was based on a projected monthly user charge of $6.00 per subscriber line for all business and governmental customers effective April 3, 1984.

However, since the time that the budget estimate was developed, we have received more recent cost information from the FCC indicating that the actual requirement for line access charges for the Judiciary in fiscal year1985 will be approximately $545,000. Accordingly, $250,000 ($215,000 from Operation and Maintenance, and $35,000 from Bankruptcy) was subsequently conceeded during the House Hearings.

QUESTION:

Standard Level User Charge increases are again proposed to go up substantially in various accounts. Please identify increases in each appropriate account by percentage and funding levels.

ANSWER:

The response follows:

Estimated Standard Level User Charge
for Fiscal Year 1985

(dollar amounts in thousands)

Account	1984 Budget	1985 Budget Request	Increase	Percentage of change between 1984 & 1985
United States Court of Appeals for the Federal Circuit	$ 1,126	$ 2,432	$ 1,306	116.0
United States Court of International Trade	1,584	1,720	136	8.6
United States Courts of Appeals, District Courts, and Bankruptcy Courts				
Existing Space	118,918	143,759	24,837	20.9
Additional Space	.....	3,746	.....	.....
Defender Services	1,275	1,602	327	25.6
Administrative Office of the United States Courts				
Existing Space	2,270	.....	.....	.....
New Building		3,390	.....	.....
Federal Judicial Center	414	738	324	78.3

QUESTION:

Does the budget submission assume annualization of a 3.5% pay increase for Federal judges effective in FY 1984? Specify the accounts and the amounts involved.

ANSWER:

Yes, the fiscal year 1985 budget includes the following amounts for annualization of the 3.5 percent pay increase for Federal judges and the Directors of the Administrative Office and Federal Judicial Center. Legislation to restore this 3.5 percent pay increase to judges is now pending in the Congress.

Account	Amount
Court of Appeals for the Federal Circuit	$ 9,000
Court of International Trade	6,000
Salaries of Judges	600,000
Administrative Office of the United States Courts	750
Federal Judicial Center	750

QUESTION:

Of the funds appropriated to the Federal Judicial Center for FY 1983, were monies lapsed to the treasury? If so, how much?

ANSWER:

In fiscal year 1983 the Federal Judicial Center had an appropriation of $7,684,000. Of this amount only $9,000, approximately one-tenth of one percent, lapsed to the Treasury.

QUESTION:

What have been the benefits from the establishment of circuit executives? Have operations improved? If so, what have been the improvements?

ANSWER:

A report on the circuit executive program prepared by the Federal Judicial Center in 1979 indicated that the circuit executives initially focused on minutiae to establish a "track record" and relieve the judges of such details. Since that report was completed, the role of the circuit executive has been expanded considerably to include all matters of administrative policy for the court and the council, the staffing of the circuit's policy committees, and in acting for judges on routine administrative matters. The circuit executive has assumed most of the administrative details formerly imposed on the chief judge and the circuit council and, because the circuit executive is an administrator, the executive has been able to accomplish these administrative responsibilities much more efficiently than either the chief judge or the circuit council heretofore. The role of the circuit executive is that of secretary of the circuit council, executive assistant for the chief judge of the circuit and, as such, he works principally with the judicial council, with the chief judge of the circuit, and the district judges.

In recent years, many additional responsibilities have been placed on circuit councils by statute, by Judicial Conference action, and by Administrative Office regulation. The circuit executive is essential for the proper and expeditious handling of these new administrative requirements which include such administrative details as regards implementing the Judicial Conduct and Disability Act, the decentralizing of the purchase of furniture, securing authorization for the appointment of emergency temporary law clerks, handling bankruptcy merit screening procedures, organizing circuit judicial conferences, etc.

The Judicial Conference Subcommittee on Supporting Personnel has found that each circuit places somewhat different responsibilities on the circuit executives and, as a result, has asked the Federal Judicial Center to consider reviewing and documenting the activities of circuit executives for the Subcommittee's benefit and in anticipation of Congressional oversight hearings regarding the effectiveness of the program.

QUESTION:

You are requesting an 8 percent increase in deputy clerk positions (31 people), in an attempt to reach the Judicial Conference ratio guideline of 75 case filings per clerk.

—Is this increase really needed in light of the fact that the caseload is expected to only increase by 6 percent?

—If the 31 positions are not approved, what effect (if any) would this have on case processing?

ANSWER:

Current case filing data underscores the continued conservative nature of our filing estimates in that a projection made today would show a higher level of increase than 6%. During fiscal year 1983, the number of appeals filed and terminated in the courts of appeals reached the highest level ever recorded. In spite of this record high termination rate, pending cases also reached an all-time high in fiscal year 1983. In fiscal year 1983, the courts were operating at a ratio of 81/1 well above the Judicial Conference approved ratio of 75/1. The positions for fiscal year 1985 are needed to "catch up" with the actual increase in filings in fiscal year 1983 and the current projections for fiscal year 1984 and 1985.

If the requested 31 positions for the courts of appeals are not approved, some of the courts of appeals now in the process of or ready to begin automating their case management and docketing activities may have to defer such automation which is expected to result in improved information available to the court and better monitoring of cases and, thus, hopefully faster disposition times.

QUESTION:

You are requesting a 14 percent increase in staff (428 people). Is such an increase really needed since you estimate the civil and criminal caseload is expected to only increase 4 percent?

ANSWER:

Our caseload projections have consistently been conservative resulting in less than necessary staffing which in turn has caused delays in processing litigation as well as deferring efforts to improve the level of service rendered by the court. Because of the normal lag between the budget request and the budget execution one must be careful not to draw conclusions from fragmented annual data. For example, while it may appear on the surface that the percentage increase in deputy clerk positions requested for 1985 greatly exceeds the case filing increase for the same period, a more comprehensive analysis clearly points up the gap that has existed between caseload and authorized deputy clerk positions for the past ten years. Page 6.26 of the FY 1985 budget compares case filings and authorized deputy clerk positions from 1975 to 1985. This table shows that case filings increased by 82.5 percent from 1978 to 1985, whereas authorized deputy clerk positions increased by 41.5 percent or only about half the rate of filings. From the table on page 6.26 of the Budget justification, it should be noted that, as a rough measure of productivity gains in the clerks' offices, in 1978 the ratio of case filings to deputy clerks was about 73 to 1, whereas this same measure in 1985 increased to 94 to 1, an increase of about 29 percent.

In addition to this, however, is the fact that clerks' offices are continually being required to perform more functions. Whereas in the past, almost all the effort in clerks' offices was devoted to processing cases, now there are a tremendous number of administrative responsibilities which clerks' offices have been given in addition to their "traditional" functions. For example, clerks have been assigned greatly increased fiscal and administrative services duties, including the disbursement of appropriated funds and local procurement. Even among the "traditional" duties, however, clerks' offices are being called upon by the court to expand the services provided to the judges of the court to aid them in disposing of cases, particularly in the areas of case management and jury management. All of these areas have combined to require more staff for the clerk of court independent of the manpower needs associated with the rapidly increasing filings.

QUESTION:

You request an additional 27 pro se law clerk positions and state that the districts to which they will be assigned have met the Judicial Conference criterion of 300 prisoner cases per year. You also state that the positions will be established "as a means to centralize most of the research in one location in the court."

—What are the specific duties and responsibilities of the pro se law clerks?

—How do these duties and responsibilities differ from those of the judges' individual law clerks?

ANSWER:

The pro se law clerk is not assigned to any one judicial officer, but instead acts as a focal point within the court for the handling of prisoner litigation, and thus is responsible to the whole court in this area. Because of the large numbers of prisoner petitions filed in many of the district courts, the centralization of the work associated with these cases has proven very effective. The pro se law clerk will generally perform the initial screening of a prisoner action, drafting recommendations to the assigned judge or magistrate on the request to proceed in forma pauperis and on the merits of the issues involved. He will perform research on these cases as required to assist the court in preparing opinions and disposing of the case. In these duties the pro se law clerk is acting in a similar capacity to an elbow law clerk, but because of his specialization in this one area, he develops an expertise and is able to work more efficiently in this area. However, the pro se law clerk's role goes beyond that of the elbow law clerk in that the pro se law clerk becomes involved in all aspects of prisoner litigation, including the processing of the cases and of the prisoner correspondence to the court. The pro se law clerk might have the responsibility to evaluate the procedures of the court in handling prisoner litigation in order to improve the effectiveness of the processing of these cases (and he will work closely with the clerk's office on this), to review the pending prisoner caseload to ensure that the cases are moving to disposition, to keep abreast of legal and legislative developments in the area and apprise the court of such developments, and to compile statistics and reports on the prisoner caseload in order to identify problem areas and offer solutions.

Centralized case-processing of all prisoner cases assures that meritorious petitions will be presented promptly to the court, facilitates the identification and prompt dismissal of repetitive and frivolous filings, enables multiple civil rights actions involving the same facts and issues to be consolidated if appropriate, minimizes duplicative legal research, and reduces the potential for inconsistent decisions within a district. Also, because the prisoners filing these cases are usually not represented by attorneys, these cases often involve more work on the part of the court to process and monitor than other types of cases.

QUESTION:

If we increased the use of electronic sound recording, could we eliminate the need for the 10 work years to handle court reporting activities? (p. 6.28)

ANSWER:

The level of supervision would remain constant whether the employee is a court reporter or a court electronic recorder, although the nature of the work may vary. There would be more monitoring of transcription companies and less of reporters, for example. However, with the court electronic recorder operator being available to the court for other duties when not in the courtroom, as opposed to the court reporter who is never available to the court when not actually taking the record, there should be an overall savings in clerical personnel.

QUESTION:

You are requesting an 11-1/2 percent increase in staff for the Probation Service (224 probation officers and 106 support staff), in part, because of the increase in the

requirements for investigative reports. Is this large increase in staff needed in light of the fact that clients under supervision are only expected to rise 6 percent?

ANSWER:

The workload increased in 1984 at a rate higher than had been anticipated. For both 1984 and 1985 we expect over 6% growth in the number of persons under supervision, a total of nearly 13% over 2 years. Similar growth is occurring in other indices of the workload. In 1984, the increase in staffing levels was only 2.2%.

QUESTION:

Could some of the required reports be prepared by less costly support staff personnel, thereby reducing the number of probation officer positions?

ANSWER:

No. All investigative reports which are used in projecting personnel needs require work by professionally trained staff and involve contact with local authorities and convicted offenders, demanding critical analysis of the information obtained. The responsibility for these investigations rests with the probation officer who must be able to defend his findings at presentence hearings, revocation hearings, and the like.

QUESTION:

In light of sentencing reform proposals, there will be a need to have very definitive presentence reports prepared for use by judges. Will this impact substantially on your activity and necessitate more resources?

ANSWER:

Yes. The sentencing reform proposals will increase the time it takes to complete presentence reports and conduct sentencing hearings. It is difficult to project the precise impact as this will depend on the type of guidelines developed by a sentencing commission. Clearly there will be a need for establishing with greater specificity facts related to the offense, prior record, and financial history of offenders. The application of sentencing guidelines to individual cases may result in longer and more formalized sentence hearings. In addition, the sentencing commission would require improved sentencing statistics to support their sentencing policies and guidelines.

PRETRIAL SERVICES FUNCTIONS

QUESTION:

For the record, please respond to the points raised in the attached letter; specifically, has the Administrative Office investigated the possibility of providing pretrial services on a contract basis in appropriate circumstances? In addition, does the Judicial Conference agree with the position that the Pretrial Services Act prohibits the addition of staff to Probation Offices to provide these services?

ANSWER:

No. The Administrative Office has not thoroughly investigated the possibility of providing pretrial services on a contract basis. Since the passage of the Pretrial Services Act in September 1982, the emphasis has been placed (1) on training probation office staff in the 84 districts, other than the ten demonstration districts, in pretrial services procedures, and (2) on assessing the needs of pretrial services and the performance of the probation offices in providing those services.

We have recently obtained from the National Association of Pretrial Services Agencies (NAPSA) a current roster of existing pretrial services programs. We have matched them geographically with their respective federal jurisdictions and mailed them to the appropriate districts with a cover memorandum which advises that the Administrative Office will assist in determining the suitability of an agency to provide the services and that the Administrative Office would seek funding for contract services where required. (See attachment)

The Judicial Conference, while advised of the argument that the Pretrial Services Act prohibits the addition of staff to probation offices to provide pretrial services at its regular meeting in September 1983 and March 1984, has relied upon its Committee on the Administration of the Probation System and its Committee on the Budget to address the argument in reliance upon policy positions formulated by the Conference upon legislation which was later enacted as the Pretrial Services Act.

It is true that the conference report, H.R. Rep. No. 792, 97th Cong., 2d Sess., expressed an intent that no new resources would be provided to probation offices for performance of the pretrial services function. However, that committee intent was not carried forward in the legislation enacted. On the contrary, the option to perform the pretrial service in probation offices and the requirement for affirmative recommendations by the district courts and judicial councils strongly suggests that those entities are to determine the most effective means of delivering pretrial services in particular districts and not merely whether probation offices can discharge the function with existing staff.

More importantly, the legislation does not limit the twelve categories of pretrial services to be provided under Sec. 3154 when those services are to be provided by an existing probation office. There is no way most probation offices could perform these added services without additional personnel.

In all districts except the ten demonstration districts this responsibility has devolved upon probation offices since September 27, 1982, the date of enactment of the Pretrial Services Act of 1982. See 18 U.S.C. 3152(a), as amended by the Act. Authority for the appointment of probation officers is provided by 18 U.S.C. 3654, and authority to provide for the salaries and expenses of probation offices is provided by 18 U.S.C. 3656. These two statutory provisions, were not amended and provide authority for the allocation to the Probation Service of any approved resources necessary to carry out the pretrial services function.

In addition, the express language of 18 U.S.C. 3152(a) as set out in the 1982 Act provides authorization for these appropriations: ". . . provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriations Acts), for the establishment of pretrial services in each judicial district. . ." While the legislation is expressed in an indirect manner, it is not ambiguous. We hope this Committee will not modify the unambiguous substantive statutory language by binding the appropriation process to supply an intent those statutes do not contain.

NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES
918 F Street, N.W • Suite 500 • Washington, D.C. 20004

March 13, 1984

Honorable Paul Lexalt, Chairman
Subcommittee on Commerce, Justice,
State and Judiciary
Senate Appropriations Committee
Room S-128 - U.S. Capitol Building
Washington, D.C.

Dear Senator Lexalt:

I understand that your Subcommittee will be conducting hearings on the request of the Administrative Office of the U.S. Courts for additional probation positions, and I am writing to bring to your attention information you may wish to consider on the issue of the implementation of the Pretrial Services Act of 1982.

By way of introduction, I am currently President of the National Association of Pretrial Services Agencies, (NAPSA); the professional association of pretrial practitioners who offer a variety of services including release, diversion and others.

NAPSA has had a long-standing interest in this important legislation; the Association participated in the drafting process, testified on various occasions prior to passage, assisted in designing the evaluation of the initial ten pilot pretrial services agencies, provided training for staff of the first ten programs, and offered to assist the Administrative Office in the implementation process. (See attached letter to William E. Foley dated December 17, 1982.)

As you know, the Pretrial Services Act of 1982 calls ~~for the establishment of pretrial services~~ in each District in the United States. At the time the law was enacted, much consideration was given to the question whether these services should be provided by independent agencies or placed within the existing Federal Probation structure. Based on the experiences of the original ten pilot programs where the five independent programs "outperformed" the five probation-run programs, permanent legislation was passed reflecting a preference for independent programs. While the legislative history is clear on this point, the law itself provides that while Federal Probation may provide pretrial services, it is not authorized to add staff to carry out these functions. As I read the law, it authorizes local programs to provide pretrial services on a contract basis as one alternative.

I understand that despite the specific prohibition against adding staff to Probation Offices to provide these services, the Administrative Office is seeking extra probation officers for various District Courts for the sole purpose of providing pretrial services. As you might deduce, in addition to misinterpreting the law by adding staff, those who seek these positions may well be opting for the most expensive manner of providing services since many local programs exist across this country and could provide services by contract as the law suggests.

There are no doubt many Districts where Probation Officers may well be the logical choice to provide pretrial services. On the other hand, there are definitely jurisdictions where existing local programs could, on a contract basis, add the Federal component to their existing workload at substantial savings to the taxpayers.

I am in frequent contact with pretrial program directors and I know that there is interest in pursuing this possibility. We have so stated in letters directly to the Director of the Administrative Office, and in testimony provided to the Subcommittee on Crime of the House Judiciary Committee as recently as June 1, 1983. Unfortunately the Administrative Office has shown little interest in pursuing this possibility and may well attempt to foreclose it altogether.

I would be more than pleased to assist you or the Committee in any way you deem appropriate.

Sincerely,

John A. Carver

John A. Carver

Enclosure

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

April 3, 1984

MEMORANDUM TO SELECTED CHIEF JUDGES

SUBJECT: PERSONNEL NEEDS FOR PRETRIAL SERVICES

This is to follow up my letter to you of February 27, 1984, regarding choosing the form of organization for pretrial services in your district.

The House Appropriations Subcommittee held hearings on the Judiciary's 1985 budget request on March 13, 1984. In those hearings, the Chairman requested a report on pretrial services positions requested by district and the type of organization selected by district. Therefore, I must have your projected personnel needs and choice as to the form of organization by April 16, 1984. I realize that circuit concurrence for those districts electing to request special designation under title 18, U.S.C. §3152(b) may not be possible by the sixteenth. In those instances, the district court's decision is sufficient for our limited purposes at this time.

You will note that the assessment reports accompanying my letter of February 27, 1984, did not make a specific recommendation regarding the availability of contractual services. In the event you are interested in exploring that alternative, in whole or in part, we have obtained from the National Association of Pretrial Services Agencies (NAPSA), a listing of pretrial services and diversion agencies. If any of these agencies are located in your jurisdiction, you will find the name and address attached. This list is fairly complete, but there may be other agencies that are not known to NAPSA. Inclusion of such information does not imply that the Administrative Office recommends the agency or that the agency is capable of providing the service. Please let us know if the court is interested in contracting for any services or locations. We will assist in determining the suitability of the local agencies to provide pretrial services, conduct the contract procedures, and seek funding as necessary.

William E. Foley

QUESTION:

Please provide for the record the recommendation of the Probation Committee as to the form of pretrial services organization in each district.

ANSWER:

The recommendations of the Probation Committee as to the form of pretrial services organization in each district have been listed as follows:

RECOMMENDATION OF THE PROBATION COMMITTEE AS TO FORM OF PRETRIAL SERVICES ORGANIZATION

DISTRICT	STAFF[1]	LOCATIONS[2]	RECOMMENDATION
ALABAMA MIDDLE	2	1	PROBATION
ALABAMA NORTHERN	5	2	INTERMEDIATE
ALABAMA SOUTHERN	2	1	PROBATION
ALASKA	2	1	PROBATION
ARIZONA	8	2+	INTERMEDIATE
ARKANSAS EASTERN	3	1	PROBATION
ARKANSAS WESTERN	1	1+	PROBATION
CALIFORNIA CENTRAL	16	1+	SEPARATE-SPECIAL REC.[3]
CALIFORNIA EASTERN	7	2+	INTERMEDIATE
CALIFORNIA NORTHERN	9	1+	SEPARATE OFFICE
CALIFORNIA SOUTHERN	15	2	SEPARATE OFFICE
COLORADO	4	1	PROBATION
CONNECTICUT	3	2	PROBATION
DELAWARE	1	1	PROBATION
FLORIDA MIDDLE	7	3	INTERMEDIATE
FLORIDA NORTHERN	2	1+	PROBATION
FLORIDA SOUTHERN	23	2+	SEPARATE OFFICE
GEORGIA MIDDLE	2	1+	PROBATION
GEORGIA NORTHERN	6	1	SEPARATE-SPECIAL REC.[3]
GEORGIA SOUTHERN	3	3	PROBATION
GUAM & N. MARIANA	1	1+	PROBATION
HAWAII	3	1+	PROBATION
IDAHO	1	1	PROBATION
ILLINOIS CENTRAL	3	1+	PROBATION
ILLINOIS NORTHERN	11	1	SEPARATE-SPECIAL REC.[3]
ILLINOIS SOUTHERN	2	1	PROBATION
INDIANA NORTHERN	2	1	PROBATION
INDIANA SOUTHERN	3	1	PROBATION
IOWA NORTHERN	1	1	PROBATION
IOWA SOUTHERN	2	1	PROBATION
KANSAS	3	2+	PROBATION
KENTUCKY EASTERN	3	2	PROBATION
KENTUCKY WESTERN	3	1	PROBATION
LOUISIANA EASTERN	6	1	SEPARATE OFFICE
LOUISIANA MIDDLE	1	1	PROBATION
LOUISIANA WESTERN	2	2	PROBATION
MAINE	1	2	PROBATION
MARYLAND	14	2	SEPARATE OFFICE
MASSACHUSETTS	5	2	INTERMEDIATE
MICHIGAN EASTERN	13	1+	SEPARATE OFFICE
MICHIGAN WESTERN	3	1	PROBATION
MINNESOTA	4	2	PROBATION
MISSISSIPPI NORTHERN	1	1	PROBATION
MISSISSIPPI SOUTHERN	2	2	PROBATION
MISSOURI EASTERN	4	1	PROBATION
MISSOURI WESTERN	3+	2	PROBATION-SPECIAL REC.[3]
MONTANA	2	1+	PROBATION
NEBRASKA	1	1	PROBATION
NEW HAMPSHIRE	1	1	PROBATION
NEW JERSEY	9	2	SEPARATE

DISTRICT	STAFF[1]	LOCATIONS[2]	RECOMMENDATION
NEW MEXICO	3	1+	PROBATION
NEVADA	5	2	INTERMEDIATE
NEW YORK EASTERN	11	1	SEPARATE OFFICE
NEW YORK NORTHERN	1	1	PROBATION
NEW YORK SOUTHERN	12	2	SEPARATE-SPECIAL REC.[3]
NEW YORK WESTERN	3	1	PROBATION
NORTH CAROLINA EASTERN	4	1+	PROBATION
NORTH CAROLINA MIDDLE	3	2	PROBATION
NORTH CAROLINA WESTERN	3	2	PROBATION
NORTH DAKOTA	1	1+	PROBATION
OHIO NORTHERN	5	3	PROBATION
OHIO SOUTHERN	4	3	PROBATION
OKLAHOMA EASTERN	2	1+	PROBATION
OKLAHOMA NORTHERN	2	2	PROBATION
OKLAHOMA WESTERN	3	1+	PROBATION
OREGON	2	1+	PROBATION
PENNSYLVANIA EASTERN	7	1	SEPARATE OFFICE
PENNSYLVANIA MIDDLE	3	2	PROBATION
PENNSYLVANIA WESTERN	3	1	PROBATION
PUERTO RICO	4+	1	INTERMEDIATE
RHODE ISLAND	1	1	PROBATION
SOUTH CAROLINA	6	3	INTERMEDIATE
SOUTH DAKOTA	2	3	PROBATION
TENNESSEE EASTERN	4	3	PROBATION
TENNESSEE MIDDLE	3	1	PROBATION
TENNESSEE WESTERN	5	1	INTERMEDIATE
TEXAS EASTERN	2	2	PROBATION
TEXAS NORTHERN	10	2	SEPARATE-SPECIAL REC.[3]
TEXAS SOUTHERN	24	4	SEPARATE OFFICE
TEXAS WESTERN	13	4	SEPARATE OFFICE
UTAH	2	1	PROBATION
VERMONT	1	1	PROBATION
VIRGINIA EASTERN	15	4	SEPARATE OFFICE
VIRGINIA WESTERN	2	2	PROBATION
VIRGIN ISLANDS	5	2	INTERMEDIATE
WASHINGTON EASTERN	2	2	PROBATION
WASHINGTON WESTERN	5	2+	INTERMEDIATE
WEST VIRGINIA NORTHERN	2	1+	PROBATION
WEST VIRGINIA SOUTHERN	2	2	PROBATION
WISCONSIN EASTERN	2	1	PROBATION
WISCONSIN WESTERN	1	1	PROBATION
WYOMING	1	1+	PROBATION

---

[1] DOES NOT INCLUDE STAFF NEEDED FOR MANAGEMENT, BOTH OFFICER AND CLERICAL POSITIONS ARE INCLUDED

[2] "LOCATIONS"-REFERS TO THE NUMBER OF SITES WITHIN A DISTRICT IN WHICH AT LEAST 75 CRIMINAL DEFENDANTS MAKE THEIR INITIAL APPEARANCE PER YEAR. ANY DISTRICT WITH MORE THAN ONE SITE HAVING LESS THAN 75 INITIAL APPEARANCES - WHICH NUMBER STILL REPRESENTS 10% OF THE BAIL WORK - WAS GIVEN A "+" AFTER THE NUMBER OF MAJOR LOCATIONS.

[3] SPECIAL RECOMMENDATIONS ARE MADE IN 6 OF THE 10 DEMONSTRATION DISTRICTS, IN VIEW OF UNIQUE SITUATIONS THERE.

QUESTION:

You are requesting $692,000 and 20 additional legal assistants for magistrates. This will bring the total number of legal assistants to 194 positions in fiscal year 1985, servicing 240 full time magistrates. You state in your justificiation that the Judicial Conference requires that in order to qualify for a legal assistant, "a magistrate must perform a full range and appreciable volume of duties under 28 U.S.C. 636 (b) and (c)."

—What does the Judicial Conference consider to be "a full range of duties"?

—How did you determine that 174 of the 240 magistrates were performing a "full range" of duties?

—If the vast majority of magistrates are in fact performing the full range of duties, wouldn't it be more cost effective to establish more magistrate positions in lieu of judgeship positions?

ANSWER:

The concept of a full range of duties encompasses:

(a) duties under 636(b), including:

- hearing and determining any non-dispositive pretrial motion or matter in a civil or criminal case when referred by a district judge
- hearing and filing reports and recommendations to a judge on the determination of certain "dispositive" motions (i.e., motions which are dispositive of a civil or criminal case) and on the determination of various prisoner cases
- appointment as a special master in appropriate cases under rule 53 of the Federal Rules of Civil Procedure upon consent of the parties
- any other "additional duties which are not inconsistent with the Constitution and laws of the United States."

(b) duties under 636(c), including the conduct of civil trials, with or without a jury, or other disposition of any civil matter referred to the magistrate upon consent of the parties.

The duties outlined above under either 636(b) or 636(c) require a substantial amount of legal research and report or opinion-writing by magistrates. Legal assistants are intended to assist magistrates with these tasks.

The Judicial Conference Committee on the Administration of the Federal Magistrates System determined that the 174 full-time magistrates were performing a full range of duties through an individual review of each request for a legal assistant.

The Committee reviewed legal assistant requests on a case-by-case basis and scrutinized the workloads of the magistrates to ascertain whether they performed a full range of duties as noted above. The principal sources of information for the reviews were an extensive workload questionnaire which was completed by or on behalf of each requesting magistrate and the workload statistics compiled by the Magistrates Division of the Administrative Office. The questionnaire was reviewed by the chief judge of each district and by the respective circuit councils prior to submission to the Committee.

It is true that magistrate positions are less expensive to establish and maintain than district judgeships. That fact does not mean that magistrates are more cost-effective than judges or that cost-effectiveness is the sole criterion in weighing whether to establish magistrate positions rather than additional judgeships.

Magistrates and district judges are complementary -- not fungible -- judicial resources. Magistrates are adjuncts of the district courts, supplementing but not supplanting district court judges.

The performance of a "full-range" of duties by a magistrate under 28 U.S.C. 636 is not the equivalent of the conduct of all duties of a district judge under article III of the Constitution. It must be recognized that magistrates' non-case-dispositive authority in civil cases and felony matters requires the supervision of, and final case disposition by, a district judge. Magistrates' case-dispositive authority in civil cases and misdemeanor cases requires a freely-given consent of the litigants and defendants. The parties have a constitutional right to have their case determined by a district judge. Absent reasonable accessibility to a district judge, the voluntariness of the consent to disposition of the case by a magistrate may be subject to attack.

By relieving judges of hundreds of thousands of matters over the past decade, the magistrates system has clearly obviated the need to establish perhaps hundreds of additional permanent judgeships. The availability of a sufficient number of matters of the type that magistrates may lawfully handle, however, is an indispensable factor in considering the establishment of magistrate positions. In its regular and in-depth reviews of the needs for additional judgeships and magistrate positions, the Judicial Conference must and does in fact carefully consider the citizens' right to cost-effective and speedy administration of justice and their right to access to article III judges.

QUESTION:

Currently a judicial district must have 200 criminal case filings per year to be eligible for a Federal Defender Office. Do all Federal Defender districts meet this criteria?

ANSWER:

The Criminal Justice Act (18 U.S.C. 3006A(h)(1)) provides that a district may establish a federal defender organization when at least 200 persons annually require the appointment of counsel. The Act does not require the defender office itself to represent 200 persons annually. Subsection (a) of the Act specifically provides that private panel attorneys are to be appointed in a substantial portion of the cases in those districts with federal defender organizations. The United States Judicial Conference Committee to Implement the Criminal Justice Act has interpreted this provision to require the appointment of private panel counsel in not less than 25 percent of the appointed cases.

In fiscal year 1983, all districts or combinations of districts, with federal defender organizations, had in excess of 200 CJA appointments. Projections of more than 200 CJA cases in these districts have been made for FY 84 and FY 85. Thus, the actual and projected volume of CJA appointments exceeds the 200 cases per annum statutory minimum.

QUESTION:

You indicate that H.R. 4307 proposes to increase the hourly rates panel attorneys receive for their services, and permits the Judicial Conference to increase the rates even further. Will the Congress be given the opportunity to comment on the Judicial Conference's decision to further increase panel attorney compensation?

ANSWER:

H.R. 4307 would provide that panel attorneys may be compensated at a rate "not in excess of $50 per hour, unless the Judicial Conference determines that a higher rate of not in excess of $75 per hour is justified for a circuit or particular districts within a circuit." Thus, the authority of the Judicial Conference to increase the rates would be limited by the $75 maximum set by statute. Although H.R. 4307 further provides that, beginning three years after the effective date of the Act, the Judicial Conference may annually increase the $50 and $75 limits, this authority is also limited in that the increases may not exceed the annual pay comparability increases given to federal employees.

Although H.R. 4307 does not expressly provide a role for Congress with respect to the Judicial Conference authority to adjust the hourly rates of compensation, this authority would be limited by both the statutorily set maximum and the actions of Congress and the President in setting the annual federal pay comparability adjustments. In addition, funding to provide for increased panel attorney compensation rates, which have been approved by the Judicial Conference pursuant to the provisions of H.R. 4307, would be included as part of the "Defender Services" budget request. Therefore, the Congress would be afforded the opportunity to review Judicial Conference practices in connection with annual appropriations requests, and the Judiciary Committee would continue to have general oversight authority.

QUESTION:

You project that transcript costs in CJA cases will increase a total of $400,000 during fiscal years 1984 and 1985. Do you expect transcript costs to decrease in the future as a result of using electronic sound recording equipment and contracting for transcription service?

ANSWER:

As was explained in response to a similar question, we do not anticipate significant savings until the electronic sound recording program is established throughout the federal courts.

QUESTION:

It is estimated that $3,499,000 is required for the rental of copy machines. Would it be better to purchase machines?

ANSWER:

It is generally more cost effective to purchase the low-volume copiers when we can anticipate that the copy volume will remain fairly constant and when there is a probable pay-back within 24 months. We annually review the purchase accrual value of rented equipment and purchase those units that have accrued the maximum credits. In fiscal year 1983 the Administrative Office purchased 265 of these units. For those medium to large volume copiers, where the copy volume is subject to major increases or decreases, and where a change in copier size is probable within 2 to 5 years, our studies have shown that purchasing the equipment is not cost effective. However, we do take advantage of lower cost lease plans when possible.

QUESTION:

What types of office equipment are you renting to cost $1,360,000 a year? What alternatives are available to reduce costs?

ANSWER:

The base of $1,360,000 represents the lease of old word processing equipment that feasibility studies have shown not to be cost effective to purchase, because the resulting maintenance contracts would be almost as much as the present rental costs. These systems are being replaced in accordance with our word processing plan as the equipment reaches the end of its economic useful life. Our feasibility studies have also shown that it is more cost effective to purchase new systems, except when the units are only required for a short time.

QUESTION:

Your personnel summary for full time bankruptcy court positions indicates 230 full time bankruptcy judge positions. If the Congress passes legislation to make bankruptcy judges Article III judicial officers, how many will be needed? What will be the total additional cost for (1) salaries and benefits? (2) supporting personnel? (3) space and facilities?

ANSWER:

On March 21, 1984 the House of Representatives rejected the proposal to create Article III tenured bankruptcy judges by a vote of 250 to 161. The Senate rejected that proposal in April of 1983. Accordingly there is no pending legislation to create Article III tenured bankruptcy judges at this time. We would need to examine the particular provisions of any new proposal before formulating an estimate of the number needed, their salaries and benefits, supporting personnel, and space and facilities.

QUESTION:

You are requesting an additional $2,090,000 for 39 estate administrators and 27 clerical support staff positions. The Justice Department's U.S. Trustee Program will terminate on September 30, 1984, unless the Congress acts to expand or terminate the program. If the U.S. Trustee Program is terminated, is the Judiciary willing to accept total responsibility for bankruptcy case administration?

ANSWER:

The Judicial Branch is willing and prepared to accept responsibility for bankruptcy case administration in the 18 U.S. Trustee pilot districts if the program terminates on September 30, 1984. While the estate administrator program can be expanded to the pilot districts for this purpose, the Judicial Conference emphatically recommends that Congress not authorize that approach to providing services, but rather that Congress authorize a bankruptcy administrator program such as that proposed in S. 443, 98th Congress. While the administrator program would entail some new positions, in many instances those positions would be combined with existing clerk of court positions thereby reducing potential salary and space costs.

QUESTION:

Are the additional 66 positions requested based on the assumption that the U. S. Trustee Program will be terminated in the 18 pilot districts, or are they rquested for the 76 non-pilot districts?

ANSWER:

The Judiciary's fiscal year 1985 request for 39 estate administrator and 27 clerical support positions is based on the assumption that the U.S. trustee program will terminate on September 30, 1984 as provided in Public Law 98-166. If approved these positions will be utilized in the 18 pilot U.S. trustee districts.

QUESTION:

If the United States Trustee program is expanded nationwide under the direction of the Justice Department, will the estate administrator and support staff positions be abolished?

ANSWER:

If the U.S. Trustee program is expanded to all judicial districts under the Department of Justice, the bankruptcy courts' direct responsibilities for case administration and supervision of fiduciary officers will be reduced, and the specific position of estate administrator will no longer be needed. However, the "support staff" in the office of the clerk would still be needed to perform clerical tasks related to the administrative oversight role retained by the court. The need for at least some of these positions was documented prior to -- and independent of -- the establishment of the "stop-gap" estate administrator position.

QUESTION:

How many contractors are there across the country providing services to drug dependent offenders? Are the contracts to the companies providing the services awarded on a competitive basis? If not, what reasons are there for using alternate means of contracting?

ANSWER:

In all contract matters the Federal Acquisition Regulations are followed. There are currently 246 contracts with drug treatment providers and two contracts for urinalysis services in the aftercare program. There are also three contracts for urinalysis consulting and monitoring services and supplies. Most contracts in the aftercare program are awarded on a competitive basis. One hundred and eighty of the treatment contracts were awarded after presolicitation contacts with over 1200 treatment programs and after nearly 750 Requests for Proposals were issued to programs responding to the presolicitation contact. The urinalysis contracts were awarded after Requests for Proposals were sent to over 100 laboratories across the country.

Of the sixty-eight treatment contracts awarded without competition, four are contracts with State government agencies that provide aftercare services across judicial district lines. Two of the state-wide contractors are the only sources authorized to provide drug treatment services within their states. The other two state agencies provide treatment services in areas not covered by non-government agencies. In those states we have a combination of State run programs and competively awarded contract agencies. The remaining 64 are contracts where the providers are either the only sources available in the geographic areas of the contracts or the cost of the contracts is so low (under $1,000) that, according to Federal Acquisition Regulations, seeking competition is not cost-effective.

QUESTION:

You indicate on page 12.6 that the Judiciary occupies 11,603,795 square feet of rented space.

- **Is this figure computed by the Administrative Office or by GSA?**
- **If provided by GSA, how does the Administrative Office verify the accuracy of the billable space?**
- **How much of the space is utilized less than full time? (for example, non-resident judges' chambers, or courtrooms and judges' chambers in outlying court locations?), and what efforts have you made to release underutilized space?**

ANSWER:

This figure was developed by the Administrative Office. It was based on the actual amount of space that was in our inventory as of July 1, 1983 and additional space which we anticipated the General Services Administration would deliver to the Judiciary by September 30, 1984.

Each year the Judiciary sends copies of GSA's fourth quarter Standard Level User Charge (SLUC) billings to the respective courts for reaffirmation of their accuracy.

Our latest comprehensive utilization survey of courtrooms was conducted in 1980. It resulted in the closure of underutilized court facilities in 18 communities in 15 judicial districts. Since that survey, the Judicial Conference of the United States, pursuant to newly enacted (1982) 28 U.S.C. 462, has approved for release back to the General Services Administration for further assignment of district court facilities at Americus, Georgia. We now monitor utilization on a regular basis and, under newly enacted section 462 our Court Administration Committee examines identified underutilized facilities and recommends their closure, when appropriate.

Although some facilities are not being utilized to their fullest, we are aware of these situations and we are making every effort to increase their utilization by leasing arrangements with state and local courts or close them.

QUESTION:

You request $3,390,000 to rent space and consolidate the offices of the Administrative Office.

- **In how many different locations are Administrative Office personnel now assigned?**
- **Have you ensured that your new quarters will have adequate space for further growth of the Administrative Office?**

ANSWER:

The Administrative Office personnel are located in four different locations that are to be consolidated: Lafayette Building at 811 Vermont Ave., N.W.; Bell Building at 719 13th Street, N.W.; 1120 Vermont Avenue, N.W.; and 1100 17th Street, N.W. The Printing and Distribution Facility at Forestville, Maryland and the Data Center at the United States Courthouse for the District of the District of Columbia are not included in the consolidation because we could not justify the expense involved.

In our February 3, 1984 request to GSA for consolidation space on behalf of the Administrative Office, Judicial Panel on Multidistrict Litigation, and certain Federal Judicial Center divisions, we requested 154,760 square feet to meet our current needs and a guarantee of expansion space of three percent per year for growth to avoid our seeking satellite facilities in the very near future. GSA responded that they cannot guarantee availability of space for future expansion, but that the availability of space for future expansion will be made an award factor in the Solicitation For Offers.

At its March, 1984 meeting, the Judicial Conference adopted the following resolution.

> The Administrative Office of the United States Courts, established by the Congress in 1939, operates under the policy guidance of the Judicial Conference of the United States. Initially located in the Supreme Court Building, the growth and size of the Administrative Office required it to acquire additional space as early as 1954 and currently, the Administrative Office is located in five different buildings in downtown Washington and an adjacent Maryland community.
>
> The Federal Judicial Center, established fifteen years ago as the research, training and development arm of the Judiciary, which works in close coordination with the Administrative Office, now occupies three different sites in downtown Washington.
>
> The Judicial Conference of the United States takes note of the fact that having these separate offices creates a major obstacle to the achievement of efficiency and productivity and an undesirable hindrance to the necessary oversight of the Chief Justice. The Judicial Conference also notes that the Master Plan for the United States Capitol envisages a single office building for these purposes to be located immediately to the east of Union Station on land now owned by the Government.
>
> Therefore the Judicial Conference hereby urges the Congress to consider favorably a proposal to design and construct a new office building on the above mentioned site in order to bring together the offices of the Administrative Office of the United States Courts, the Federal Judicial Center, the headquarters of the Judicial Conference of the United States and satellite groups such as the offices of the Clerk of the Judicial Panel on Multidistrict Litigation and the Board of Certification for Circuit Executives.
>
> Given the current rental scales in the District of Columbia, it appears that the aggregate current payments for rent would amortize the cost of a building in a little over 7 years.

Although the Judicial Conference resolution addresses the need for a new office building on the site east of Union Station, the present space requirements of the Administrative Office are such that quarters permitting consolidation of all functions are an urgent necessity. Therefore, the entire amount requested will be required during fiscal year 1985.

QUESTION:

The Federal Judicial Center is requesting $381,000 to lease the necessary computer hardware to support experimental efforts in three district and five bankruptcy courts.

A. What is the objective of this effort and what problems if any do we intend to resolve?

ANSWER:

The primary objective of the experimental effort in the district courts is to pilot test an automated case management and court administration system that will replace the centralized software systems now in operation and, in the process of doing so, to provide a number of improvements which have been requested by the courts. The computer hardware supporting the current software systems is reaching the end of its productive life and must be replaced before its performance becomes unacceptable. We shall replace the current centralized hardware system with a decentralized computer architecture in which small but powerful computers of modern design are placed in the courts themselves.

The primary objective of the experimental effort in the bankruptcy courts is to test full case management automation for the first time in these courts. Heretofore, automation in the bankruptcy courts (a project undertaken by the Administrative Office of the United States Courts, not the Federal Judicial Center) has been aimed primarily at aiding these courts in the production and mailing of notices to creditors. The goal of the current proposal is also to serve the bankruptcy courts' general case management needs.

QUESTION:

B. Have users needs committees been established to determine the feasibility of this effort? If not, then are we premature in undertaking this effort?

ANSWER:

A district court automation users group has been established. To date, there has been one plenary meeting of this group and also a number of subgroup meetings.

In respect to the bankruptcy courts, the Center has not yet formed a users group, but our plan is to organize a committee of users, equivalent to the district court users group, in fiscal year 1984. However, the Administrative Office did consult closely with bankruptcy court users during the years the Administrative Office was providing support to bankruptcy courts, and the proposed Center development effort will build upon the solid foundation which was then developed. We might note that at the date of this writing, there remains some uncertainty about the future organization of the bankruptcy courts in relation to the district courts.

Nonetheless, we have been urged by circuit chief judges and others to give bankruptcy court automation a high priority and in view of the work already done in this area, as well as our contacts with the bankruptcy courts, we have no doubt that such automation is justified. It remains to be seen whether existing Judicial Center development resources are sufficient to complete this task.

QUESTION:

C. How does the effort in the bankruptcy courts relate to prior years' funding for the computerization of the courts? If related, then why are we still in the experimental phase?

ANSWER:

The Federal Judicial Center has not previously requested funds for developing automated systems to support the bankruptcy courts. The work done for these courts has been accomplished by the Administrative Office, which has pursued two distinct projects designed to achieve goals of limited scope. The first Administrative Office project, the Bankruptcy Automated Noticing System, supports some of the largest bankruptcy courts with their high volume requirements for the printing and mailing of notices to creditors. The second Administrative Office project, the Noticing and Docketing Information System, was designed to test the utility of decentralized automation in smaller courts by helping them with relatively low-level but easily implemented case management functions.

The BANCAP project, for which funds are currently requested by the Federal Judicial Center, will integrate full case management and associated noticing functions using hardware and software that are compatible with the decentralized support systems being designed and pilot tested in district and appellate courts. In the process we will make full use of the substantial systems analysis work and cost benefit studies previously completed by the Administrative Office. It is only in this sense that the Center effort is related to the prior Administrative Office projects.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

SOCIAL SECURITY CASES

QUESTION:

The justifications indicate a large increase in social security cases, to the extent that the actual number received in 1983 was almost twice the number originally estimated. Are the magistrates being fully utilized in the handling of these?

ANSWER:

Yes. The review of social security cases is one of the most common assignments given to magistrates in the district courts. In many districts the local rules of court authorize automatic referrals of these cases to the magistrates. Although magistrates exercise no case-dispositive authority in social security cases without the consent of the parties, their limited role substantially assists the district judges in the disposition of these matters.

In handling social security cases, magistrates review the administrative record and pleadings, hear any oral arguments that may be necessary, and submit a report and recommended disposition of each case to the district judge. In most cases a magistrate's review helps focus the judge's attention on relevant portions of an often voluminous record and helps the court address the legal arguments made by the parties that are supported by the record.

During the year ended June 30, 1983, magistrates in 80 districts completed work in 6,908 social security cases; 6,588 by the submission of a report and recommendation to a district judge; and, 320 by the entry of final judgment on consent of the parties. This represents magistrate involvement in more than one-half of the 13,409 social security cases terminated nationwide during the same period. Although no final figures are yet available, preliminary analysis indicates a substantial increase in magistrate activity in social security cases in the past 10 months.

However, it should be noted that a key feature of the federal magistrate system is the flexibility it provides to the district courts to use their magistrates in the ways that best address local caseload needs. As magistrate assignments often reflect the individual preferences of the district judges and the varying demands of a court's caseload, some district courts find it more useful to assign magistrates matters other than social security cases. Thus, magistrates will never be assigned all of the social security cases filed in all district courts.

PRETRIAL SERVICES

As provided under the law, you will give the courts the option of carrying out the Pretrial Services function within the Probation Service or by establishing a separate agency.

QUESTION:

Wouldn't it cost less and be just as effective if you gave this function to the Probation Service?

ANSWER

The Act permits each district court to choose whether it will perform the pretrial service function within existing probation offices or whether, with the approval of the circuit judicial council, it will establish a pretrial services office separate from the probation office (18 USC 3152(b) and (c). To assist the various districts in making the choice which the Act vested in them, the Administrative Office made a survey of the needs of the various districts and made recommendations to each district as to whether the function should be performed within the probation service or by the establishment of a separate agency. Most of the recommendations made by the Administrative Office were for the performance of the pretrial function within the probation service. It is the view of the Judicial Conference of the United States and the Administrative Office that it would cost less and would be equally as effective to perform pretrial services within the probation service in most districts. It is recognized, however, that there are districts in which a separate agency could be a more effective means of rendering pretrial services. For example, in a large metropolitan court that would have a high volume of cases concentrated in one location, the staff of a separate pretrial office, free of competing demands on their time, might better respond within the limited time available for the performance of initial pretrial functions.

In those courts where there is a relatively low volume of cases and where probation personnel are already geographically dispersed throughout the district, it would be advantageous from a cost and service standpoint to place the responsibility for pretrial services in existing probation offices. Not only would there be some savings in personnel, but such an arrangement also would permit greater flexibility by allowing a single officer to supervise both services. Integrated clerical staff should eliminate duplication of effort. Both the professional and clerical staff would be in a better position to more efficiently accommodate the peaks and valleys that are expected to occur in both probation and pretrial work. The impact of a vacancy in an office would be less severe, particularly in courts where the workload would only justify one or two pretrial services officers. As a part of our recent survey of needs, we asked each court to assess its current personnel needs for the performance of pretrial services. Districts that kept the pretrial service function within probation offices have requested proportionately fewer positions than districts that chose to establish separate offices. It is recognized, however, that many of the courts have had only limited experience with furnishing pretrial services. Their experience may not be sufficient to provide a valid assessment. It is the best guide we have for now.

The Budget Committee is aware that the interpretation placed on the Act by the courts is not shared by some members of Congress. However, the courts have adopted and applied an administrative interpretation that they believe is consistent with the words of the legislation, and that interpretation is presently being implemented in every court. The Budget Committee is of the opinion that this interpretation not only is correct under the law, but also would be less costly and equally or more effective than the establishment of a separate pretrial services agency in every court where additional personnel are required to perform the pretrial function.

QUESTION

Why should we approve funds to establish a separate agency?

ANSWER:

The Act permits each district court (with the approval of the circuit judicial council) to establish a pretrial services office separate from the probation office (18 USC 3152(b) and (c)). To date, eight district courts have chosen to provide pretrial services under authority of 18 USC 3152(b) and (c), and a final decision of a ninth is pending. Circuit judicial council approval is contemplated for each district.

TRANSFER OF FURNITURE AND FURNISHING FUNDS

QUESTION:

How do you obtain your stated objective of "greater control and improve management" by transferring funds for furniture and furnishings from Space and Facilities to the appropriation for Operation and Maintenance of the Courts?

ANSWER:

The funds currently available under the appropriation "Expenses of Operation and Maintenance of the Courts" essentially provide for the routine operating expenses and miscellaneous services of the courts of appeals and district courts. Expenditures for furniture and furnishings, which we also consider routine operating expenses, are funded out of a separate appropriation "Space and Facilities." The proposed transfer of furniture and furnishings funds into the "Expenses of Operation and Maintenance of the Courts" account would establish a single source for the majority of routine operating expenses of the courts. By transferring these funds, the Administrative Office will exercise a greater control by managing a single account for operating expenses, as opposed to administering two separate accounts. The transfer also provides some limited flexibility to cover unanticipated or uncontrollable increases in operating costs through the reprogramming process. Funds could be reprogrammed, with the approval of the appropriations committees, to provide for high priority operating expenses, i.e., supplies, postage, etc., from those earmarked for furniture purchases. The reprogramming process is often a desirable alternative to the formal and time consuming procedures required to process a supplemental funding request.

QUESTION:

Do you have authorizing legislation for the Drug Dependent Offenders program? Why have you increased your request by $500,000 over last year?

ANSWER:

On March 20, 1984, the President signed the Contract Services for Drug Dependent Federal Offenders Authorization Act of 1983, Public Law 98-236. This Act extended the authorization for this program through the fiscal year ending September 30, 1986.

In addition to an increased use of costly special treatment services such as residential placement and drug detoxification, we are now testing selected aftercare clients for the presence of marijuana. Using a testing schedule of only once a month per client, the projected fiscal year 1985 expenditure for marijuana testing is approximately $480,000.

ADMINISTRATIVE OFFICE FACILITIES

Last year we approved $2,270,000 for space rental charges, including $700,000 from the former "Pretrial Services Agencies" account due to the plans to relocate the Administrative Office in former space of the USIA. A report dated February 27, 1984 states that the Administrative Office has terminated all planning for occupancy of the former USIA space. However, the real estate section of The Washington Post, on March 10th reported that GSA was trying to buy the new building at 1301 New York Avenue, for the use of the AO.

QUESTION:

Please bring us up-to-date on the plans for housing the AO.

ANSWER:

An answer to a previous question points to the urgency of consolidating all employees of the Administrative Office, the Federal Judicial Center, and the Judicial Panel on Multidistrict Litigation at a single metropolitan Washington location. While construction of a new building on behalf of the Judicial Branch is our ultimate long-term goal, we recognize that realization of the goal is, at best, several years down the road.

Since our current geographical disbursement problems are acute and growing steadily, we agreed in 1982 to consolidate some of our personnel in space formerly occupied by the USIA at 1750 Pennsylvania Avenue, N.W. This agreement was predicated upon two assumptions: (1) that 1750 Pennsylvania Avenue was already under lease and thus would become ready for our occupancy relatively quickly, and (2) that the Pennsylvania Avenue building, which we were advised was the only facility in GSA's inventory which could come close to meeting our size requirements, could be altered to accommodate our needs relatively easily. These assumptions proved to be invalid: the lease at 1750 Pennsylvania was about to expire; attempts to extend the lease resulted in lengthy and frustrating delays; and most importantly, the building was revealed to be too small to house our personnel. On December 7, 1983, we were forced to instruct the National Capitol Region office of GSA to terminate planning for our occupancy of 1750 Pennsylvania Avenue.

Our request to consolidate remains outstanding, and GSA is in the process of preparing on our behalf a lease prospectus and an "SFO" -- a solicitation for offers. Assuming prompt action by GSA in completing these documents, a prompt congressional approval of the prospectus, GSA estimates tha we could begin a phased occupancy of a consolidated location in the summer of 1985.

QUESTION:

The report indicates that $225,000 of the $700,000 we transferred to this account is now required for space costs. If you didn't move, why are you incurring additional costs?

ANSWER:

The Administrative Office has incurred additional costs due to the April, 1982, involuntary relocation of several staff divisions in one of our five buildings. The General Services Administration was unable to renew its lease at 1030 15th Street and we were forced to acquire a comparable amount of space at 1120 Vermont Avenue. The rates at the new location were significantly (80%) higher than at 1030 15th Street. In addition, the Administrative Office has expanded its space housing computer facilities at 811 Vermont Avenue and at 1100 17th Street due to additional personnel hired during the past three years. We have been able to absorb the cost of this increased space and the higher rate at 1120 Vermont Avenue for the past two fiscal years; however, this year we are requesting the $225,000 to meet our GSA bill in total.

QUESTION:

The AO has submitted a supplemental request of $553,000 for increased pay, health benefits, and Social Security costs. However, your report states that the $475,000 that remains of the $700,000, is excess to your fiscal year 1984 requirements. Could not the $475,000 be used to largely offset your supplemental request?

ANSWER:

As was testified during the House Appropriations hearings for the Administrative Office, we are prepared to apply the $475,000 excess amount to our supplemental request for increased pay costs this fiscal year.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

STATEMENT OF KENNETH L. ADELMAN, DIRECTOR

ACCOMPANIED BY:
WILLIAM J. MONTGOMERY, ADMINISTRATIVE DIRECTOR
THOMAS GRAHAM, JR., GENERAL COUNSEL AND DIRECTOR OF CONGRESSIONAL AFFAIRS
WILLIAM S. S. AMOROSO, BUDGET AND ACCOUNTING OFFICER

INTRODUCTION OF ASSOCIATES

Senator RUDMAN. Our final request for today's hearing is from the Arms Control and Disarmament Agency. Appearing on behalf of this request is Dr. Kenneth Adelman, Director of the Agency.

You may introduce for the record the people who are accompanying you, and then you may proceed to summarize or do whatever you may wish to do with the statement you furnished us. The entire statement will be included in the record. We will have a few questions.

Mr. ADELMAN. Thank you very much. This is Bill Amoroso, who is our Budget Officer, and will help answer any questions. Mr. Bill Montgomery is in charge of our Administrative Office. And Tom Graham is our General Counsel.

Senator RUDMAN. Fine. Why don't you proceed with your statement. Summarize it, if you wish.

PREPARED STATEMENT

Mr. ADELMAN. I would like to submit the whole statement for the record. I believe you have a copy.

Senator RUDMAN. It will be included in the record.

[The statement follows:]

PREPARED STATEMENT OF KENNETH ADELMAN
DIRECTOR
ARMS CONTROL AND DISARMAMENT AGENCY

Mr. Chairman and Members of the Committee:

I am pleased to appear before this Subcommittee to review initiatives I have taken since becoming ACDA's Director in April of 1983, along with our other recent activities and our plans for the future. I wish, in particular, to discuss the Agency's budget request for Fiscal Year 1985. William Montgomery, our Director of Administration, and Thomas Graham, our General Counsel and Director of Congressional Affairs, will join me in responding to any questions you may have.

When I came to ACDA, the Agency was confronted by a number of problems. Some senior positions, were not confirmed; personnel levels were down; budget constraints were very tight.

I am proud to say that ACDA has since been reinvigorated as promised by President Reagan. The personnel level is up. The budget is up. Vacant senior appointments have been confirmed. Most importantly, ACDA is making its presence felt, as it should, in the development of Administration policy. We are active in the public dialogue on arms control issues facing our country, in consultations with and testimony before Congress, and in international negotiations.

The President's budget request of $24.4 million and 198 positions provides the resources that are needed for ACDA to continue the important programs we have underway and to have the flexibility we need to adjust our activities to changing international conditions. This is a small budget request by Federal Government standards but our mission and responsibilities are critical. Before presenting the FY-1985 budget request in detail, I would like to review some of our more important programs and activities for you.

Mission

ACDA has primary responsibility under the Arms Control and Disarmament Act for advising and assisting the President, the

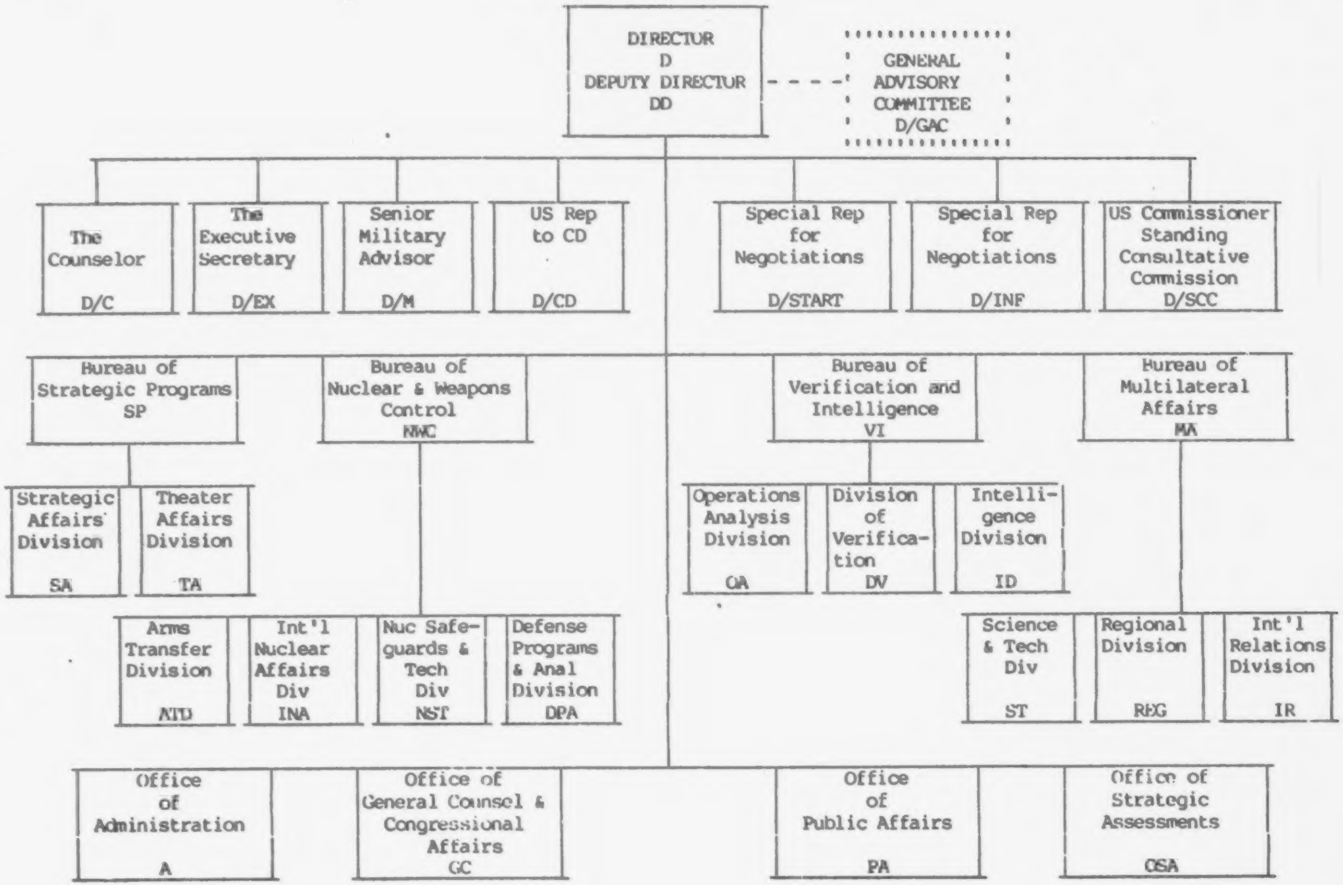
National Security Council, the Congress, the Secretary of State and other senior government officials on arms control matters.

ACDA is organized with four principal line bureaus to carry out this mission. These are the Bureau of Strategic Programs, the Bureau of Multilateral Affairs, the Bureau of Nuclear and Weapons Control, and the Bureau of Verification and Intelligence. Support functions for the bureaus and the various arms control delegations for which ACDA is responsible are provided by the Offices of Administration, General Counsel and Congressional Affairs, and Public Affairs.

ACDA presently has primary responsibility for providing financial, personnel and administrative resources for the Strategic Arms Reduction Talks (START), the Intermediate-Range Nuclear Forces Talks (INF), and the Standing Consultative Commission (SCC). ACDA has a secondary responsibility for administrative support for the United States delegation to the Conference on Disarmament (CD), the Mutual Balanced Force Reduction (MBFR) negotiations, and the Conference on Disarmament in Europe (CDE). These latter delegations receive most of their administrative assistance from the Department of State, but ACDA has a substantial backstopping and staffing role in substantive matters.

A chart showing the present ACDA organization follows:

ARMS CONTROL AND DISARMAMENT AGENCY


DIRECTOR
D
DEPUTY DIRECTOR
DD
GENERAL ADVISORY COMMITTEE
D/GAC
The Counselor
D/C
The Executive Secretary
D/EX
Senior Military Advisor
D/M
US Rep to CD
D/CD
Special Rep for Negotiations
D/START
Special Rep for Negotiations
D/INF
US Commissioner Standing Consultative Commission
D/SCC
Bureau of Strategic Programs
SP
Strategic Affairs Division
SA
Theater Affairs Division
TA
Bureau of Nuclear & Weapons Control
NWC
Arms Transfer Division
ATD
Int'l Nuclear Affairs Div
INA
Nuc Safeguards & Tech Div
NST
Defense Programs & Anal Division
DPA
Bureau of Verification and Intelligence
VI
Operations Analysis Division
OA
Division of Verification
DV
Intelligence Division
ID
Bureau of Multilateral Affairs
MA
Science & Tech Div
ST
Regional Division
REG
Int'l Relations Division
IR
Office of Administration
A
Office of General Counsel & Congressional Affairs
GC
Office of Public Affairs
PA
Office of Strategic Assessments
OSA

Bilateral Negotiations

The Bureau of Strategic Programs develops recommendations for arms control policy, strategy, tactics, and language for ongoing bilateral arms reductions talks with the Soviet Union. The Bureau provides organizational support and Washington backstopping for the Strategic Arms Reduction Talks (START), the Intermediate-Range Nuclear Forces (INF) negotiations, the Standing Consultative Commission (SCC) negotiations, and for the periodic ABM Treaty reviews as well as the major portion of the diplomatic, advisory and administrative personnel for those delegations.

The US START Delegation, under the direction of Ambassador Rowny, completed three rounds of talks in 1983. Each round lasted approximately eight weeks separated by a similar period during which the delegations returned to their capitals. At the end of the last round in 1983, the Soviets would not agree to a resumption date for the next round. President Reagan has made it clear that we are prepared to resume the negotiations at any time and hope that the Soviets will agree to this sooner rather than later.

The US INF Delegation, under the leadership of Ambassador Nitze, also held three rounds of talks with the Soviets in 1983. Like the START talks, the typical round was two months long. Two months total were also spent on consultations in allied capitals. At the end of the last round, which lasted almost three months, the Soviets unilaterally suspended the talks, with no date set for resumption. We and our Allies have called for resumption of the talks as early as possible. The US INF Delegation, like our START delegation, stands ready to resume talks at any time.

The US-USSR Standing Consultative Commission, the SCC, met twice in 1983, for a total of almost six months. The US component is headed by Ambassador Ellis. The Commission largely deals, in private, with matters regarding the implementation of and compliance with the ABM Treaty and the Interim SALT I Agreement. It has also considered questions involving activities which could undercut the SALT II Treaty. We expect that there will again be two sessions of the SCC in 1984, the first of which began last month.

ACDA will continue to work with other agencies to prepare for and support at least two SCC sessions and a regular pattern of negotiations with the Soviets on strategic and intermediate-range nuclear systems. Our budget is based on providing logistic and administrative support in Geneva for the START and INF Delegations for about six months of the year and for two three-month meetings of the SCC. If the delegations are required to remain in Geneva for more time, appropriate adjustments to the requested level may be necessary.

Space Arms Control

The Bureau of Strategic Programs also has major responsibility in the area of space arms control issues. ACDA co-chairs the Interagency Group responsible for ASAT arms control matters and is a member of the Senior Interagency Group for Space Policy. The Administration has recently submitted to the Congress a report outlining the U.S. position and prospects for ASAT arms control. ACDA has taken the lead in preparation of that report. ACDA also has the lead in ongoing efforts within the Administration to examine the range of possible space arms control options for equitable and verifiable bans and limits on specific space weapon systems compatible with U.S. interests. This enhanced role for ACDA and the difficult technical nature of this area naturally creates need for resources to support our efforts; present needs are reflected in the budget submission and we will, of course, bring any further increases to your attention. As noted below, ACDA also plays a leading role in multilateral activities and discussions related to space arms control.

Multilateral Negotiations

The Bureau of Multilateral Affairs is responsible for arms control issues which are considered in multilateral disarmament bodies. These include the 40-nation Conference on Disarmament in Geneva, previously known as the Committee on Disarmament, which deals with a number of important arms control issues; the First Committee of the United Nations General Assembly, which deals exclusively with disarmament and related issues; the United Nations Disarmament

Commission; the negotiations on Mutual and Balanced Force Reductions in Vienna between NATO and Warsaw Pact countries; and the Conference on Confidence and Security Building Measures and Disarmament in Europe, which is the security effort mandated by the Conference on Security and Cooperation in Europe. In addition to providing much of the staffing for our delegations to these bodies, ACDA participates in the development of U.S. policy, prepares guidance and supports their efforts from the Washington end.

ACDA plays a leading role in the Conference on Disarmament, known as the CD. It meets each year for a total of approximately six months, with sessions from February through April and again in the summer from June through August. Presently, we are heavily involved in the CD with the draft treaty for a complete ban on chemical weapons which was submitted by Vice President Bush on April 18, 1984. We are also participating in discussions regarding possible further arms control measures affecting outer space, and we also participate in the group discussing radiological weapons.

The First Committee of the United Nations General Assembly meets each fall for approximately two months and addresses a wide range of disarmament issues. ACDA takes the lead in developing United States positions for use in the Assembly's debate and in negotiations on the development of Assembly resolutions. Among the resolutions by the General Assembly last year were a Western-sponsored initiative on INF and one sponsored by France seeking further refinements on the implementation of the UN mechanism for investigating CW use. Other resolutions covered a range of disarmament issues, including the call for convening a third special session on disarmament. The UN Disarmament Commission normally meet once a year for three or four weeks, usually in May or June.

The MBFR negotiations met from March 16 through April 19, 1984, in Vienna. Last year, the East had made some moves of interest on verification before suspending the talks in December. In an effort to show new flexibility during the round just ended and to determine whether real progress could be achieved in MBFR, the West introduced a major new initiative in the talks on

April 19, 1984. We expect the negotiations will be active over the next year. ACDA continues to play a leading role in U.S. policymaking on MBFR.

Finally, the Conference on Confidence and Security Building Measures and Disarmament in Europe, known as the CDE, was mandated by the latest Conference on Cooperation Security in Europe, held in Madrid last fall. The CDE is focusing on security issues. A preparatory conference was held in Helsinki in October 1983, and the CDE formally convened in Stockholm this January 17th. It is tasked with adopting a set of mutually complementary confidence and security building measures to reduce the risk of surprise attack and enhance security in Europe. ACDA plays an important role in this 35-nation arena. We provide the Deputy U.S. Representative and two advisors to the U.S. delegation, as well as support their efforts through the interagency process in Washington.

Non-Proliferation

ACDA's Nuclear and Weapons Control Bureau provides advice, assessments and policy recommendations on the international relations and technical aspects of non-proliferation and has line responsibility for reviewing nuclear exports and consulting on the negotiations of civil nuclear agreements with other countries.

Preventing the spread of nuclear weapons to more countries continues to be a fundamental national security objective, which is expected to face increasing challenges in FY-1985. In Southeast Asia, unsafeguarded Pakistani and Indian nuclear activities continue to be a source of grave concern. The spread of peaceful nuclear technology and nuclear material in Latin America, Asia, Africa, the Middle East, and the Far East will raise problems of domestic and international export control, increase intelligence needs, and put stress on the International Atomic Energy Agency safeguards system. The Nuclear Non-Proliferation Treaty Review Conference in FY-1985 will pose serious challenges. ACDA will continue to be deeply involved in efforts to address these and other non-proliferation issues.

ACDA will have the lead responsibility in the Executive Branch for the crucial 1985 NPT Review Conference. This Treaty is a cornerstone of our non-proliferation efforts. Preparations include one Preparatory Committee meeting in FY-1984 preceding two more Preparatory Committee meetings and the Conference itself in FY-1985. Other conferences on related issues and preliminary consultations indicate that the 1985 Conference will be complex and difficult. A constructive outcome will be important to maintaining strong international efforts against nuclear proliferation.

The biannual conference to review the operation of the Treaty of Tlatelolco will be held in FY-1985. This Treaty seeks to create a nuclear weapons free zone in Latin America and is an important element of the Administration's non-proliferation policy. ACDA has taken the lead in preparing for this conference in the past and has played a leading role within the Executive Branch in seeking full adherence to this Treaty. We will also give high priority to efforts to provide technical assistance to emerging peaceful nuclear programs in countries party to both the Treaty of Tlatelolco and the Non-Proliferation Treaty. To that end, we are developing initiatives to assure that technical assistance is offered to countries in accordance with U.S. non-proliferation goals and objectives.

ACDA will continue to play an important role in efforts to strengthen the international safeguards regime and to increase physical protection measures for storage and the transport of nuclear materials, and to encourage the development of non-sensitive technologies for nuclear waste disposal for developing countries. Steps by other countries toward the civil use of plutonium make such efforts increasingly important to achieving our security goals in the non-proliferation area. We will continue to support the program for Reduced Enrichment in Research and Test Reactors (RERTR) to develop low enriched uranium fuels which can be substituted for weapons-usable high enriched uranium fuels currently required for a number of foreign and domestic research reactors.

In FY-1985 we also want to strengthen cooperation among supplier countries on nuclear export controls. This problem becomes more difficult as technology moves into new areas and as more countries become capable of exporting nuclear material and equipment. We must increase efforts to improve existing international controls on nuclear and nuclear-related exports, and on so-called dual-use exports; to monitor and restrict nuclear exports to sensitive regions; and to follow through on President Reagan's initiative to gain agreement among suppliers on requiring comprehensive international safeguards for significant nuclear exports.

This brief overview highlights some of the non-proliferation activity of ACDA. The complexity of non-proliferation and its crucial interaction with U.S. foreign policy and national security involve a variety of measures in which ACDA is the lead agency or plays a key role. I will continue to ensure that ACDA has sufficient resources to address this critical problem.

Arms and Technology Transfer

The Arms Transfer Division in NWC assesses the arms control implications of proposed transfers of arms and military-useful technology and represents ACDA in interagency arms and technology transfer policy studies.

ACDA is involved on a day-to-day basis with the Departments of State and Defense and other concerned agencies to ensure that the arms control implications of proposed exports of conventional weapons and militarily-useful technology are given full consideration in the decision-making process.

Pursuant to the Arms Export Control Act and the Foreign Assistance Act of 1961, as amended, we advise the Secretary of State and, as appropriate, the President on the extent to which proposed transfers of conventional arms will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements. When requested, ACDA prepares for the Congress evaluations of the arms control implications of proposed sales. We also prepare statements of arms control considerations involved in each country program for inclusion in the annual Executive Branch request to the Congress for U.S. security assistance.

The Soviet Union continues to undermine regional stability and threaten the security of independent countries by providing massive amounts of arms to surrogate states. The persistence of this challenge, together with the growing sophistication of modern weapons, will result in a large volume of complicated arms transfer issues in the future, which will require ACDA's involvement.

ACDA also participates with other agencies in controlling civilian exports which contain technology with potential military utility ("dual-use" technology). We give particular attention to cases involving the possible transfer of strategic technology to the Soviet Union and its Allies, and cases having a potentially adverse effect on arms control verification.

As a result of greatly intensified Soviet efforts to acquire Western technology and the rapid advances in militarily-useful technology, we will be required to consider increasingly complex technology transfer policy issues in the future. We will also be devoting increasing attention to the arms control issues raised by trade in space technology which could have military applications. These activities complement ACDA's efforts in other areas such as nuclear non-proliferation, all of which are directed toward maintaining regional and global stability.

Defense Programs and Analysis

The Agency's Defense Programs and Analysis Division in NWC is responsible for evaluating the national security implications of arms control proposals and for conducting analyses of defense policies, programs, and technologies as they relate to arms control. The Division prepares the annual submission of arms control impact statements (ACIS) to the Congress which is required by law. In addition, the Division prepares the World Military Expenditures and Arms Transfers (WMEAT) publication, provides analytic support to other arms control activities, and participates in certain space-related policy deliberations. The Division also provides the Agency point of contact for operational activities related to Antarctica Inspections and is responsible for compiling the Director's Annual Report to the President.

February 1, 1984 marked the ninth annual submission of ACIS by the Executive Branch to the Congress. Each impact statement analyzes the possible implications of these programs for arms control and disarmament policy and negotiations, along with providing detailed information about the programs under consideration. This year's submission (FY 1985) included nine ACIS covering a large number of Department of Defense and Department of Energy programs.

Each year, the military and economic statistical data in WMEAT describes the size, trends and distribution of global military expenditures and the world's arms trade. This information includes the amount of resources devoted to military purposes by individual states, alliances, and the world, and a 10-year history for each. The next edition is expected to be published this spring.

The Antarctica Treaty which entered into force in 1961 provided that the continent will remain demilitarized and shall be used for peaceful purposes only. From January to March 1983, a member of this Division was on the inspection team for Antarctic stations to ensure compliance. This was the most extensive inspection to be undertaken in over a decade.

Verification

The Bureau of Verification and Intelligence (VI) is the principal organization of the Arms Control and Disarmament Agency responsible for questions related to verification and compliance.

In the performance of this mission the Bureau organizes and supervises studies and policy papers dealing with the verifiability of provisions of current and projected arms control agreements. The Bureau is also responsible for the assessments of verifiability called for in Section 37 of the Arms Control and Disarmament Act.

Other functions carried out by the Bureau of Verification and Intelligence include:

- analysis of information pertaining to compliance of other states with existing arms control agreements;
- assessment of potential new systems and capabilities for verification;
- participation in U.S. and international bodies involved in verification and compliance issues;

-- provision of intelligence information to the planning and conduct of arms control negotiations;

-- management of automatic data processing resources for ACDA;

-- provision of operational analysis for all ACDA bureaus and offices.

The Bureau is also responsible for storing and controlling all documents that contain special intelligence material and for obtaining the necessary access to compartmented intelligence information.

The Agency's Verification and Intelligence Bureau had a leading role in the Arms Control Verification Committee in the preparation of the President's Report to Congress on Soviet Non-Compliance with Arms Control agreements. This report addresses seven compliance issues, taking a careful and realistic view of Soviet legal obligations and political commitments in the arms control field and assesses Soviet activities in light of them. The report exposed several violations and several probable violations. It was an important step in bringing these issues to the attention of the Congress and the public.

We are continuing to monitor compliance with all existing arms control agreements carefully. We hope that our demonstration of strong interest in compliance issues will in itself serve as an important tool in improving future compliance. A viable and effective arms control process can only exist if we are all confident that agreements are being fully complied with.

As reported to the Subcommittee separately, ACDA recently completed a review of operations analysis and automatic data processing (ADP) programs. As a result, I approved in January establishing a Division of Operations Analysis within the Verification and Intelligence Bureau. This Division is responsible for providing operations analysis for all ACDA bureaus and offices. Additional positions have been made available for the OA Division to increase its capabilities and a budget, as of April 1, 1984, for computer and OA related activities set at $1,063,000. A similar budget is planned for FY-1985.

Public Affairs/Public Diplomacy

ACDA's enabling legislation contains a specific mandate for the dissemination of arms control information to the public. We take this seriously. Public awareness of arms control issues has grown tremendously in the past few years. We understand the need for an informed citizenry in support of efforts to reduce the threat of war.

ACDA has taken steps to help public understanding of the complex issues of arms control. I, my Deputy Director, the Chief Arms Negotiators and other officials have met with numerous Congressional committees, citizens' groups and concerned citizens around the nation to clarify the issues and explain the Administration's policies. We have been responsive to public and press requests for detailed information on the full range of arms control concerns. We distribute regular summaries of public and press coverage of the subject, and in 1984 issued a concise guide to current negotiations to respond to public requests. Also in 1984, ACDA organized in cooperation with the Aspen Institute a two-day seminar for the press covering arms control subjects to enhance understanding of the issues and outlook for negotiations.

ACDA has also been a leading participant in the interagency process of public diplomacy to ensure that U.S. positions at the negotiations are fully understood by foreign publics. The public dimension of negotiations is addressed by ACDA as policy options are formulated. We contribute the special expertise we possess to efforts to achieve public understanding. For example, in 1983 we published a booklet detailing Soviet propaganda efforts to depict the INF arms negotiations to fit their own objectives. Another example, is a series of concise and timely information sheets on each of the major issues and negotiations was begun for the information of general groups, schools and the public.

We plan to continue and expand these public information activities through the production of a documentary film on U.S. arms control efforts, a stepped-up program of public appearances, and production of information booklets on current arms control subjects.

FY-1985 Budget Request

For FY-1985, ACDA is requesting an appropriation of $24.4 million, 174 full time positions and 24 full time equivalents of other positions. We have also provided for expenses related to the detail of 37 foreign service and military officers to assist ACDA in positions where their backgrounds can be of special help to us. This is an increase of five full-time positions over FY-1984. The request includes $19.5 million for continuing ACDA programs and $4.9 million for the Reduced Enrichment in Research and Test Reactors program which is being transferred from the Department of Energy.

This budget request is indicative of the President's firm commitment to arms control and builds upon the FY-1983 supplemental appropriations request and FY-1984 budget amendments submitted to the Congress last year.

ACDA's largest budget expense category is for personnel compensation. Over $10.4 million or 53 percent of our funding for continuing programs is needed for salaries, benefits and other personnel expense items. This represents an increase of $405 thousand over FY-1984 and is primarily for the increased staff positions. The remaining $435 thousand in additional funding covers estimated increases in travel, essential housekeeping items such as rents, communications, utilities, and supplies and equipment.

External Research

The portion of the ACDA FY-1985 budget request which is planned for external research programs, in addition to the $4,932,000 for for the Reduced Enrichment in Research and Test Reactors Program (RERTR), is $1,535,000.

In February, I established a Research Review Board chaired by my Deputy Director. The Board will confer with ACDA's Bureau and Office Heads to work out detailed projects within this planning budget. We intend to structure FY-1985's external research around ACDA's purpose, objectives and priorities rather than organizational sponsorship. Preliminary indications are that the FY-1985 program will have an emphasis on projects supporting ACDA's involvement in international nuclear safeguards, non-proliferation, verification and support for the various negotiations that depend on ACDA backstopping efforts. In addition, emerging interest in space arms control suggests the need for continuation and growth in ACDA's external research to support U.S. Government analysis of space arms control issues.

Delegation Expenses

Geneva

ACDA leases office space in Geneva, Switzerland and maintains a small administrative staff there to support our delegations when they conduct negotiations in Europe. Direct expenses for these facilities are estimated to be at $1,803,000 up from $1,663,000 for the previous year. This increase reflects a modest allowance for inflation expected in FY-1985.

The START and INF delegations are housed in four floors of the Botanic Building in Geneva, with a fifth floor being reserved for negotiation sessions with the Soviets. When space is available we also provide office and conference space to our delegation to the Conference on Disarmament. We have 30,000 square feet available for our use in this building.

The above funds are allocated to the Department of State for fiscal disbursement by the U.S. Mission in Geneva as we request services during the year. This allotment does not include the cost of travel, per diem, salaries and other related expenses for personnel assigned to the delegations. We estimate that an average delegation requires funding of approximately $160,000 for an eight-week session for travel, per diem and miscellaneous expense exclusive of salaries and other non-travel expenses for permanent staff and detailees assigned to delegations. A normal delegation for which ACDA has primary responsibility will include ten (10) ACDA representatives, three (3) interpreters, and an equal number of representatives from various interested agencies.

Vienna

The Mutual Balance Force Reduction (MBFR) administrative costs in Vienna are borne primarily by the State Department. ACDA contributes to the direct expenses of the ACDA representative to the delegation and occasional support expenses necessary to the work of the delegations. For FY-1985 we anticipate that this will involve approximately $162,000 to cover salary, benefits and rent.

Stockholm

The Conference on Disarmament in Europe at Stockholm gets primary financial support from the State Department. ACDA is responsible for expenses related to the Deputy Delegation Head, who is an ACDA employee, and his secretary for FY-1985. We are estimating that these expenses will amount to $211,000 for the Deputy's salary and benefits, a TDY secretary, travel and per diem, and modest miscellaneous items.

Representation Funds

ACDA's FY-1985 request includes $28,000 for representation purposes. These funds are used primarily for activities related to international affairs and a high percentage is budgeted for our delegations serving overseas or for important conferences and other sessions held with representatives of other countries.

ACDA's work requires constant contact with senior foreign officials. With these funds ACDA is able to initiate valuable informal contacts with important representatives of foreign countries and the Agency is able to reciprocate for invitations received from foreign officials in a manner required by diplomatic custom. Even at this level, our delegation heads and other representatives are sometimes required to use their personal funds to insure that their delegations can abide by the rules of diplomatic courtesy. These financial resources are essential to ACDA's mission.

Conclusion

Mr. Chairman, this concludes my testimony today. I urge the

Committee to support ACDA's 1985 budget request and it's adoption in the full amount. I will be happy to answer any questions which you may have concerning ACDA's activities or our funding request for the next fiscal year.

ACDA BUDGET REQUEST

Mr. ADELMAN. I will say very briefly that our budget is a $24 million request this year, which, without the program that will be normally kept at the Department of Energy, is $19.5 million for ACDA. This is up some 4.5 percent this year. Last year, because the President gave us an additional $2 million and Congress supported that, we were up some 16 percent.

We have also worked with OMB to get an increase of 20 full-time equivalents, which means our staff is up some 13 percent over the next 3 years. This is part of the President's desire to reinvigorate ACDA, as he promised when I was confirmed by the Senate. I am happy to say the administration has carried through very nicely on the President's pledge.

I think, Mr. Chairman, if we get our full amount of money, that ACDA will be a reinvigorated agency and will continue to work, as we have in the past, on the multilateral and nuclear arms control agreements that we are very hopeful for in this administration.

As you know, the status of the nuclear arms talks are held up because the Soviets walked out at the end of last year due to deployment of missiles in Europe. Meanwhile, we have moved ahead in some lesser known but equally important forums, such as on the Committee on Disarmament meeting in Geneva, to ban chemical weapons, where the Vice President proposed a treaty a few weeks ago, talks on the CSCE, about stopping a surprise attack in Europe; and the MBFR talks on conventional force reductions in Vienna.

Senator RUDMAN. Goodby is in Stockholm?

Mr. ADELMAN. Yes. And Abramowitz is in Vienna. Ambassador Fields is on the Committee on Disarmament in Geneva.

I would like to open it up now to your questions.

Senator RUDMAN. That is fine. We have a few.

I was just trying to think back. When were you confirmed?

Mr. ADELMAN. April of last year.

Senator RUDMAN. That is what I thought. I was going to say what a difference a year makes. [Laughter] Here we are sitting in a very cozy little hearing room and we have a good, constructive, and I hope brief hearing. My goodness, a year ago when you appeared up here we probably could have heard the Kennedy Center affiliate of the Opera House.

Mr. ADELMAN. I much prefer this way. I had enough of the Opera House, or you could even say the circus at the stadium.

Senator RUDMAN. It is amazing how people lose interest. But they have other fish to fry. I know of other things to say, but I won't.

Mr. ADELMAN. Frying seems like a good verb in this context. [Laughter]

Senator RUDMAN. Very briefly, although you are here before us today and I know—when was your last appearance before the Foreign Relations Committee?

Mr. ADELMAN. Several months ago.

STATUS OF U.S.-U.S.S.R. ARMS TALKS

Senator RUDMAN. Briefly, what do you think the outlook is for doing the talks that the Soviets have left? It is probably going to wait until after the elections, as many people speculate. Just give us your brief assessment.

Mr. ADELMAN. My brief assessment on the INF talks, is that the Soviets are unlikely to start them, resume them, in the forum that we have held them in the past, that they have been pretty categorical in saying that the INF talks are over, dead and finished.

On the START talks, they made a distinction by saying that they have not broken off the START talks, they have just ended the round in December and have not set the resumption date of the next round, which was a similar process to what they practiced in MBFR. As you know, on March 16 they resumed MBFR. So we are hopeful on START.

I would say there are three things that would drive the Soviets on the calculation as to whether to resume the START talks this year. One would be their judgment of how to affect the U.S. elections. Second, their judgment on how to affect peace movements in Europe. Third, their own internal situation.

It is kind of an unusual period in Soviet history where the leadership is uncertain. It has been that way since the time President Reagan came to office. In these 3 years there have been three heads of the Soviet Union, two of whom have spent a lot of their time while President Reagan was in office seemingly incapacitated. So that part of the equation is going to depend on how much they can get their own act together.

Our position, Senator, is very clear, that we are ready to go back to INF and START at any time. We have encouraged the Soviets to do so. Our teams are still together. Our negotiating posture is one of flexibility. The President has spent a great deal of time even in recent weeks and months looking at our proposals, trying to keep them updated, doing contingency plans, so we are ready to roll.

THE MUTUAL AND BALANCED FORCE REDUCTION TALKS

Senator RUDMAN. I understand that in MBFR and the Western nations have introduced a new initiative on April 19. Do you think we may have any significant progress there in the near future on those particular talks as opposed to the other?

Mr. ADELMAN. It is tough to say because the MBFR talks have been going on for 11 years. There is a basic reason they have been going on for 11 years without an agreement. That is that the disparity between their estimate of troops in Central Europe and our estimate is vastly different. It is a 190,000 difference. We are hopeful that the Soviets will be more forthcoming on the data issue and on verification, but those are exceedingly slow-moving negotiations.

THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE

Senator RUDMAN. In your justification you indicate, "Agreement was finally reached on important human rights issues and on security issues" at the Madrid meeting of the Conference on Security and Cooperation in Europe. Could you just briefly tell us the substance of those agreements?

Mr. ADELMAN. Yes. On the security issues, that is in our bailiwick, we had an agreement to open up a CSCE forum that you mentioned a minute ago, Mr. Chairman, with Ambassador Goodby in charge of that. That is a forum to look at what we think are important confidence-building measures to preclude a surprise attack in Central Europe, by notification, by accuracy in their estimates of troops, by other measures we can take to open up the security arrangements in the Central European front.

That negotiation is the result of the CSCE process. What is interesting about it is, not only does it have to do with security for the first time in the CSCE process, but it also considers the area from the Pyrenees to the Urals, which includes part of the Soviet Union itself.

On human rights, Max Kampelman has done a superb job there as our Ambassador to CSCE. The main accomplishment there is to use a forum which all of the Europeans participate in, East and West, to stress our principles of human rights, openness, emigration, free press, freedom of religion. In that way it became quite important, especially after the marshal law in Poland, for example, when foreign ministers of all of the major European countries, one after another, spoke about the situation on martial law in Poland. That gets a lot more press play and attention in Europe than it does here. It is a constant reminder of the distinction between East and West Europe.

ACDA PERSONNEL

Senator RUDMAN. If we can talk about your personnel levels just for a moment, they fell to a low of 154 last year. GAO was critical of that. Last year the President asked for a supplemental. Next year, or 1985, you are asking to fund 174 positions. Is that enough?

Mr. ADELMAN. Yes. We think that the 25 positions over 3 years, including detailees, are sufficient for that. We also have other programs, Mr. Chairman, such as a program that Senator Pell has started to have scholars come in from the outside for 1 year. We had the former directors of ACDA assembled last month to get the program underway. We have gone through all kinds of applications for these positions and selected six scholars to come in for 1 year to help ACDA. That kind of program gives us additional manpower that is mandated by the Congress.

There was a little rush this year because the legislation didn't pass until December or January. But it was my determination that ACDA should launch the program anyway because it was one wanted by the Congress and because it was inherently a good program, to get new blood into the agency for a period of a year, new ideas from leading academics, and to send them back with good experience on how the government works.

ACDA RESEARCH PROGRAM

Senator RUDMAN. Let me move briefly to your research money. GAO is critical of ACDA's past practice of transferring some of those funds to other uses and recommended that Congress specifically designate your research funds in the law itself, as we do with some other agencies. First, could you tell us what you are doing? Do you agree with that recommendation, that we ought to tighten it that much?

I think I know your answer. Tell me why.

Second, what are you doing to strengthen your external research program?

Mr. ADELMAN. No Government agency that I have ever been involved with in 10 years of working in government has ever encouraged the government to earmark funds for anything in its budget. I will keep on that tradition.

Senator RUDMAN. That was probably a statement that is 110 percent accurate. I think we can probably examine the records around here for a hundred years and find you are right. [Laughter]

Mr. ADELMAN. I am not saying that if I were on the other side that would be exactly my view, but the executive branch, they never want to be tied down.

The research money has fallen from some $6 million when the Agency began to a little over $1 million right now. That is for several reasons.

One is that there is a lot more capability in-house for the kinds of studies, computer studies and software studies, and looking at arms control, than there was when the agency first began.

Second, and I can say this coming from academic life, there is just a lot more activity in arms control out there in academia, at MIT, Harvard, Johns Hopkins, Stanford University. They all have programs on arms control that are headed up by excellent people. They publish articles in "International Security," "Foreign Affairs," so we get that kind of approach to arms control—I was going to use the phrase new ideas, but I will say different approaches to arms control instead— which did not exist in 1961 and 1962.

THE RERTR PROGRAM

Senator RUDMAN. For several years the administration has requested authority to transfer the reduced enrichment in research and test reactors, the RERTR program, from the Department of Energy to ACDA. Originally this transfer was needed because the administration wanted to eliminate DOE. We understand you have the money to turn it over to DOE's labs to carry out the work. Is that correct?

Mr. ADELMAN. That is right. The program has never been transferred, so every year it seems like it is tradition now that it is in our budget and we asterisk what ACDA actually spends and then Congress does not transfer that program. So we have to explain throughout the year why the books show our money as $24 million but we actually have $19.5 million.

Senator RUDMAN. We will see if we can fix that.

How many detailees do you receive from other government agencies? Do you want to answer that for the record?

Mr. ADELMAN. We have 37 in the 1985 budget. That is both military and foreign service officers.

Senator RUDMAN. I understand.

Just coming back to your research efforts, are you making some efforts to coordinate all executive branch arms control research efforts as mandated by Executive Order 11044?

Mr. ADELMAN. Yes, we are. We have started to coordinate research efforts in ACDA itself, which is a first step toward that, and to have a board to look at research requests from the different bureaus and make sure that what the Verification Bureau is doing is not duplicated by the Strategic Programs Bureau or the Multilateral Bureau.

What we also are doing is to get in closer touch with OSD, DNA, and other organizations around town who have many, many times the amount of research money we have to see if we can put in some ideas and seed money and for them to pay the big bucks on this effort.

SUBMITTED QUESTIONS

Senator RUDMAN. Very good, Mr. Adelman. We may have some additional questions from the subcommittee for the record. If we do, we will keep this record open for probably a couple weeks. We are very delighted to have had this tranquil hearing today.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

New Postions

Q: How much of your increase related to the new positions?

A: $225 thousand of ACDA's FY-85 budget request is for salaries related to the five additional positions.

Q: Why do you need the five additional positions?

A: The five additional positions are needed to increase ACDA's professional staff capabilities and as a part of the President's recommended increases in resources for the Agency which were begun with supplements to FY-83 and continued in FY-84 and FY-85.

Reduced Enrichment in Research and Test Reactors Programs

Q: What is the benefit of having this program at ACDA instead of DOE?

A: The RERTR program is an important element of a non-proliferation initiative begun in the previous administration to reduce the amount of highly enriched uranium in international commerce. This program has received strong support from the President and the Executive Branch agencies concerned with non-proliferation. However, for the past four years (FY 81-84) the DOE has not requested funds for the RERTR program, and considerable effort has been expended in the Executive Branch and Congress to assure that the RERTR program received the funds it needed. It is essential from a foreign policy and non-proliferation perspective that this program be continued and that it be funded at the level necessary to proceed on its schedule to have high-density low-enriched uranium available for commercial use by 1988. Including funds for the RERTR in ACDA's budget would assure that the program would expeditiously accomplish its objectives for a number of reasons:

(1) ACDA management at the highest level is committed to the timely completion of the RERTR program;

(2) ACDA has and will make available the necessary technical and contracting staff to administer and supervise the program (funds would be transferred to Argonne National Laboratory through DOE with ACDA oversight);

(3) ACDA would closely coordinate the activities of RERTR with State and DOE to assure that the program addressed US non-proliferation concerns, including exports for and conversion of research reactors.

Q: Have you received any indication that the other body will go along with the change?

A: ACDA has received no indication from Congressional Committees concerning their intention for transferring the RERTR program to the DOE.

Support of START and INF Delegations

Q: How much is being saved in fiscal 1984 by the suspension of these meetings?

A: The START and INF Delegations remain intact the only financial savings resulting from these talks being in recess is the travel and miscellaneous expenses which result when these talks are on TDY to Geneva. ACDA budgeted for three two month sessions for both INF and START Delegations. The estimated TDY expenses for each of these eight week sessions is $165,000.

New-Computer

Q: How much did the new computer described on page 16 cost?

A: ACDA had budgeted a total of $577,000 over a three-year period (FY-83 thru FY-85) for the acquistion of its new computer (including hardware and software).

Travel Costs

Q: What accounts for the 15 percent increase in travel, per diem and transportation in fiscal year 1985?

A: International travel is essential to the arms control and disarmament mission. An increase of 9.2 percent over FY-84 costs for overseas air fare and per diem is estimated by the Department of State. In addition to this increase, ACDA's budget request anticipates the resumption of the START and INF talks; as well as, playing the lead role in the NPT Review Conference to be held in 1985.

Q: What are your INF and START teams doing during the break?

A: As you are aware, there are formal INF and START Delegations when negotiations are in session; but when negotiations are not in progress, the INF and START Delegations return to Washington and various members/advisors once again work for their respective agencies--State, ACDA, OSD and JCS. The ambassadors of each of the delegations maintain a small staff and continue to hold periodic delegation meetings between negotiating rounds. Specific INF and START Delegation activities during the current hiatus in negotiation are as follows:

INF--Ambassador Nitze and most of his Delegation are back with their respective agencies in Washington. Ambassador Glitman, the Deputy Chairman of the Delegation, remains in Geneva. Ambassador Nitze participates fully in the ongoing United States Government review of arms control issues and the Delegation meets periodically to hear experts on INF-related issues and to consider contingency negotiating approaches in response to possible Soviet moves on INF. If the Soviets were to agree to resume negotiations, the US Delegation could return to Geneva in a very short time.

START--The START Delegation began weekly meetings in late January in order to hear various experts, both within and outside the Administration, discuss events inside of the Soviet Union such as the change in leadership and the prospects for a Soviet return to negotiations. Outside experts have included individuals like Brzezinski, Scowcroft, and other members of the Dartmouth group who recently visited the Soviet Union. In late March, the Delegation visited Norton AFB to learn more about the Peacekeeper (MX) and small ICBM (SICBM) programs and the Lawrence Livermore National Laboratory. Further trips of this nature are planned to keep the members of the START Delegation current on US strategic weapons programs. Finally, Ambassador Rowny is a full participant in the interagency process that is reviewing the United States position on START.

Q: ACDA participates in the U.S. - U.S.S.R. Standing Consultative Commission which handles matters of implementation of the ABM Treaty, the Interim SALT I Agreement and monitors activities which could under cut the SALT II Treaty. There have been charges of cheating leveled by both sides. Do you believe serious cheating on one of those three agreements has occurred? If so, how has it been handled before the Commission?

A: The President's January 1984 Report to the Congress on Soviet Non-compliance with Arms Control Agreements included the US Government's determinations, after a careful review of many months and numerous diplomatic exchanges, that with respect to seven initial issues analyzed, violations and probable violations have occcured with respect to Soviet legal obligations and political commitments in the arms control field. Four of these seven issues involve Soviet violations and probable violations of the ABM Treaty and the SALT II Treaty.

With respect to the SALT II Treaty, the President's Report included the determination that the Soviet Union is violating limits on the use of telemetry encryption and a rule concering ICBM modernization, and that the Soviets have probably violated the limit on new ICBM types and the ban on SS-16 ICBM deployment. With respect to the ABM Treaty, the President's Report included the determination that Soviet deployment of new, large phased-array radar almost certainly violates Treaty limitations on such radars.

These matters are of serious concern to this Administration, and as noted in the President's letter transmitting the Report to Congress, we have discussed our concerns with the Soviet Union. Thus far, we have been disappointed with the results of these discussions. It would be inappropriate, however, for me to go into the details of our exchanges with the Soviets in the SCC or in other private diplomatic channels, for the public record, because such exchanges are confidential. We are continuing to analyze all available information and will continue to press our compliance concerns with the Soviet Union through confidential diplomatic channels and insist upon explanations, clarifications and corrective actions.

Q: Given the evidence of the use of chemical weapons in Southeast Asia and in the Iran-Iraq war, do you perceive a new willingness by world Governments to use such weapons? What do you believe will be the future of the President's initiatives to end the use of chemical weapons? How can such agreements be verified?

A: The use of chemical weapons in several countries of the world today indicates that existing international inhibitions, legal and normative, against the use of these weapons are eroding. These inhibitions are the 1925 Geneva Protocol, which bans the use in war of chemical weapons; the 1972 Biological and Toxin Weapons Convention, which bans the production and stockpiling of toxin weapons and customary interational law.

The President's initiative in presenting a draft treaty will help accelerate the ongoing negotiations to prohibit chemical weapons, completely. A comprehensive, effective U.S. approach in eliminating chemical weapons is now on the table, but not as a take-it or leave-it proposition. If the Soviet Union and other nations of the Conference on Disarmament really desire to ban chemical weapons once and for all, they will study our draft. The U.S. is willing, even eager, to consider any other approaches that countries might have to this problem as long as these approaches would provide comparable levels of assurance of compliance.

The key to verification is deterrence through detection. Violations are deterred by maximizing the risk that they will be detected; and if violations occur, the ability to gather the evidence necessary to take appropriated action in a timely manner must be present. The system of verification measures in the U.S. draft treaty are designed to do this. The proposed verification systems relies heavily on on-site inspection, both routine and to investigate possible violations. In particular, the "open invitation" procedure that the Vice President referred to during his presentation of the draft would promote confidence that all countries are abiding by the treaty. By allowing, on short notice, unimpeded access to all military facilities and locations, and government-owned or controlled locations and facilities, parties to the treaty will have a basis for confidence that chemical weapons could not be produced or stockpiles covertly.

Q: Observers generally agree that the influence of ACDA in any adminisration usually depends on the Director's relationship with the President and the Secretary of State. How would you describe your relationship with President Reagan and Secretary Shultz?

A: I have been in all the many NSC meetings chaired by the

President on arms control issues, including START, INF, MBFR and CW. In addition, I have met privately or in small groups with the President on a number of occasions. I meet almost daily with Secretary Shultz in his morning staff meetings and have frequent private meetings with him. Our relationship is close and as a result ACDA and State work closely and effectively together.

Due to these excellent relationships, ACDA has been considerably strengthened in the last year. For example, the President, on my recommendation, proposed a substantial budget increase for ACDA and a substantial increase in the number of allotted personnel positions for ACDA.

Q: ACDA belongs to over 20 different interagency groups and committees. Before last year, ACDA did not chair any of those groups. That fact has brought criticism from the House and expressions of concern by you. What are you doing to change that situation, and what progress have you made?

A: ACDA currently chairs a number of interagency groups responsible for arms control. After being confirmed as Director, I worked with others to secure the chair of the Space Arms Control Interagency Group for ACDA. Interagency Groups responsible for arms control chaired by ACDA also include the following: the Arms Control Verification Analysis Committee (co-chair); the SCC Backstopping Group, the INF/START Backstopping Group; the Conference on Disarmament Backstopping Group and the ACIS Working Group. One of my highest priorities as ACDA Director has been to strengthen ACDA within the Government.

Q: Please provide for the record, the number of detailees you receive from other government agencies.

A: ACDA's FY-1984 Budget Request provides funding for 37 detailees from State Department and DOD.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
SUMMARY OF REQUIREMENTS
(Dollars in thousands)

APPROPRIATION: SALARIES AND EXPENSES

SUMMARY OF ADJUSTMENTS TO BASE AND BUILT-IN CHANGES:	POS.	PERM. AMOUNT	POS.	AMOUNT
APPROPRIATION CURRENTLY AVAILABLE, 1984			169	18,500
ADJUSTMENTS TO BASE AND BUILT-IN CHANGES:				
ADJUSTMENT FOR 1984 PAY INCREASE AND RELATED COSTS	- -	+128		
SUBTOTAL, ADJUSTMENT TO BASE AND BUILT-IN CHANGES				128
1985 BASE			169	18,628

COMPARISON BY ACTIVITY:	1983 ACTUAL		1984 CURRENTLY AVAILABLE		1985 BASE		1985 ESTIMATE		INC. (+) DEC. (-) OVER 1985 BASE	
	PERM. POS.	AMOUNT	PERM. POS.	AMOUNT	PERM. POS.	AMOUNT	PERM. POS.	AMOUNT	PERM. POS.	AMOUNT
OFFICE OF THE DIRECTOR	20	1,911	20	2,307	20	2,318	20	2,389	-	$ 71
AGENCY STAFF SERVICES	139	14,092	149	16,193	149	16,310	154	22,011	5	5,701
TOTAL REQUIREMENTS	159	16,003	169	18,500	169	18,628	174	24,400	+5	+5,772

NOTE: $5,772 INCREASE INCLUDES $4,932 FOR RERTR PROGRAM WHICH IS TRANSFERRED TO DOE.

SUBCOMMITTEE RECESS

Senator RUDMAN. The subcommittee will stand in recess until tomorrow.

[Whereupon, at 3:30 p.m., Monday, April 30, the subcommittee was recessed, to reconvene at 2 p.m., Wednesday, May 2, 1984.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

TUESDAY, MAY 1, 1984

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2 p.m., in room S–146, the Capitol, Hon. Lowell P. Weicker, Jr., presiding.

Present: Senators Weicker, Stevens, Inouye and Bumpers.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF JOHN V. BYRNE, ADMINISTRATOR

ACCOMPANIED BY

- **ANTHONY J. CALIO, DEPUTY ADMINISTRATOR**
- **JAMES W. WINCHESTER, ASSOCIATE ADMINISTRATOR**
- **CARMEN J. BLONDIN, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES RESOURCE MANAGEMENT, NATIONAL MARINE FISHERIES SERVICE**
- **RICHARD E. HALLGREN, ASSISTANT ADMINISTRATOR, NATIONAL WEATHER SERVICE**
- **JOHN H. McELROY, ASSISTANT ADMINISTRATOR, NATIONAL ENVIRONMENTAL SATELLITE DATA AND INFORMATION SERVICE**
- **JOSEPH O. FLETCHER, ASSISTANT ADMINISTRATOR, OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH**
- **PAUL M. WOLFF, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE**
- **JOHN J. CAREY, DIRECTOR, OFFICE OF BUDGET AND FINANCE**
- **JAMES SMITH, NOAA BUDGET OFFICER**

CONGRATULATORY REMARKS TO JOHN BYRNE

Senator WEICKER. The subcommittee will come to order.

Today the subcommittee meets to hear testimony from the National Oceanic and Atmospheric Administration on the fiscal year 1985 budget proposal. Before I begin my remarks on the budget, John, I would like to congratulate you on your new position upcoming at the Oregon State University as president. I think that you have presided over NOAA, and it has been a very difficult time in the sense of a conflict of priorities between the Executive and the Legislative Branches.

I think you have been very fair to, No. 1, the American people; you have been loyal to your boss, but I think you have handled it in a very precise, scholarly and understanding way. I know that of all the Administrators, I have certainly enjoyed working with you the most, and I think it is a great loss, I really do, a great loss for our Government in the sense of having somebody of your caliber and knowledge depart the scene.

So I wish you the best of luck in what lies ahead. Even now as you depart, I will be disagreeing rather forcibly with the budget that you present, but I know that you are one in the country who can take great pride in having advanced the interests, our interests in the oceans. I just want you to know that before we get going with the business at hand.

Dr. BYRNE. Thank you very much.

CUTS IN NOAA BUDGET

Senator WEICKER. Again this year, Congress is faced with an administration budget that fails to recognize the importance of the oceans. Less than 14 months after the President has proclaimed the largest exclusive economic zone of any nation on Earth, a proclamation which more than doubles the area under U.S. economic jurisdiction, the administration is continuing its effort to gut the Nation's primary ocean agency, NOAA. The fiscal year 1985 budget proposes a 12-percent cut in funds for NOAA, a cut that entails the termination or drastic reduction of programs which are essential to our effort to tap the oceans as an economic resource.

Specifically, NOAA is proposing a budget of $899.3 million for fiscal year 1985 compared to $993.6 million for 1984. This would result in a staff reduction of 1,706 positions to 10,144 employees.

I just think the time of this kind of level funding, or in this instance, cutting, has to come to an end. The fact remains that this is the greatest untapped resource that the Nation has, and I might add, I listened with interest and support to the President's request for a large funding for NASA. When I first came to the Congress of the United States in the House of Representatives representing the Fourth District of Connecticut, I went to the Space Committee.

I was one of those who had a hand in evolving our space policies. I gave them my fullest support because I believe that the future of the Nation very much lays in the heavens, or more importantly, in our mastery of the science required to operate in that environment.

I continue to support enthusiastically our venture into space. But sooner or later, we better get a grip on what it is that we have here on this planet, and I now talk about the oceans, because it is inevitable. We will turn to the oceans both for our food and for our energy, and I don't want it done in the usual American fashion where, with a lack of knowledge, we go in there and we manage to spoil it to the extent that we use up in a matter of 10 years something that should last 10,000, and that is the way America handles these types of emergencies.

SCIENTIFIC EFFORTS AT OCEAN RESEARCH

Now, we are not going to do it the right way unless we know about it. When I took over this Subcommittee of Appropriations, I started to educate myself in the matter of the oceans. I didn't know a thing about it. I still don't know a great deal about it, but I still spend a good amount of time at it. To see what is being recommended on the one hand, for the space effort, a scientific effort that has a cause, which it does, and on the other hand, while we go back on the oceans makes no sense at all. If I had to choose between the two, I suppose I would choose the oceans. There is no reason why we have to choose between the two. They are both scientific ventures that are worthy of our support as a nation if, indeed, we will prevail as a predominant society on this Earth.

We have had this battle last year, and Congress managed to prevail. Even with that, since 1980, funding for Federal ocean programs has declined by nearly 40 percent. These programs have not received adjustments for inflation. The Department of Commerce has directed NOAA to absorb unforeseen costs instead of seeking supplemental funding. Despite congressional intent to level fund NOAA, the agency has lost $100 million since 1980. This circumvention of the funding process has bled NOAA to the point that it cannot perform essential functions.

HYDROLAB FACILITY

So as we move into these hearings, I want it clearly understood as to what the chairman's position is. The committee's position is something that will, of course, be determined by a vote of the committee. There is a whole community out there that is ready, willing and able to make us the premier nation of the world in terms of our knowledge of the oceans. A little money is required. You should know the Hydrolab facility, which is owned by NOAA, which is run by Fairleigh Dickinson University, this facility is one of its kind in the world, the only ongoing facility of its kind in the world, enabling scientists to live on the bottom of the ocean floor, conduct experiments in the various disciplines for 1 week, 2 weeks at a time; the facility I have been in now on I guess about four or five occasions for anywhere from 3 to 5 days. What do we pay, John, $500,000 a year to Fairleigh Dickinson, is that it? About $500,000. That gives you an idea as to what is being done out there.

It is some extraordinary education by the staff at West Indies Laboratory, by the people that work at the Hydrolab facility, by the people that work at NOAA to make this thing work, and it does work.

If Congress had its way, we will be on our way to a second generation of Hydrolab. We are talking about a facility, that is now 18 years old. I will tell you what I think we ought to do. If the fellows over there at OMB don't like facilities at the bottom of the ocean floor, I can put a couple of them in there and see if they like it when it——

[Laughter.]

Senator WEICKER [continuing]. Starts to receive pressure and the glass starts to seed itself and you hear a few noises here and there, I tell you.

There is no excuse for that, absolutely none. That is my pitch. I am just sorry that we have to come back at this thing again. We are going to have a head-on here as between the Chair and the administration in committee and again on the floor. But believe me, what we are talking about here is an investment that is absolutely essential to the Nation, and in terms of cost savings, in terms of a cost/benefit ratio, it is just enormous.

Nobody in their right mind can doubt where it is that this Nation has to turn for its energy and fuel eventually, nobody, and its food, nobody. You can do it right or you can do it wrong, and that is going to be determined by virtue of today's votes. So I have spent a little time on this because it has been close to my heart. I know I left the committee's chairmanship, but I haven't lost my interest in this particular aspect of the committee's jurisdiction.

[Senator Weicker's statement follows:]

Prepared Statement of Hon. Lowell P. Weicker, Jr.
U.S. Senator from Connecticut

Good Afternoon. The Subcommittee will come to order.

Today, the Subcommittee meets to hear testimony from the National Oceanic and Atmospheric Administration on its FY 1985 budget proposal. Before I begin my remarks on the budget, however, I would like to congratulate you on your new position as president of Oregon State University. The Administration and Congress have often been at odds over NOAA, and this has put you in a difficult position. Please understand that there was nothing personal in these debates we've had. I appreciate everything that you have done for NOAA and wish you the best of luck in your new job.

Again this year Congress is faced with an Administration budget that fails to recognize the importance of the oceans. Less than 14 months after the President has proclaimed the largest Exclusive Economic Zone (E.E.Z.) of any nation on earth, a proclamation which more than doubles the area under U.S. economic jurisdiction, the Administration is continuing its efforts to gut the nation's primary ocean agency, NOAA. The FY 1985 budget proposes a 12% cut in funds for NOAA, a cut that entail the termination or drastic reduction of programs which are essential to our effort to tap the oceans as an economic resource. Specifically, NOAA is proposing a budget of $899.3 million for Fiscal Year 1985, compared to $993.6 million for 1984. This would result in a staff reduction of 1,706 positions, to 10,144 employees.

The time for such short-sighted attitudes and budgeting must end. The simple fact is this: the oceans are important to the future

OF THIS NATION. THEY DESERVE ADEQUATE SUPPORT.

FOR FOUR YEARS NOW, CONGRESS HAS REJECTED THE PRESIDENT'S NOAA BUDGET. PROPOSED REDUCTIONS HAVE NOT BEEN ACCEPTED IN THE PAST AND IT IS MY INTENTION TO SEE THAT THEY WILL NOT BE ACCEPTED THIS YEAR.

UNFORTUNATELY, EVEN WITH CONGRESSIONAL RESTORATIONS, NOAA IS BEING SERIOUSLY ERODED. SINCE 1980, FUNDING FOR FEDERAL OCEAN PROGRAMS HAS DECLINED BY NEARLY 40%. THESE PROGRAMS HAVE NOT RECEIVED ADJUSTMENTS FOR INFLATION. THE DEPARTMENT OF COMMERCE AND OMB HAVE REPEATEDLY DIRECTED NOAA TO "ABSORB" UNFORESEEN COSTS INSTEAD OF SEEKING SUPPLEMENTAL FUNDING. DESPITE CONGRESSIONAL INTENTIONS TO LEVEL FUND NOAA, THE AGENCY HAS "LOST" 100 MILLION DOLLARS SINCE 1980. THIS CIRCUMVENTION OF THE FUNDING PROCESS HAS BLED NOAA TO THE POINT THAT IT CANNOT PERFORM ESSENTIAL FUNCTIONS. MORALE WITHIN THE AGENCY IS AT AN ALL TIME LOW. LETTERS AND NEWSPAPER ARTICLES ALLEGING INTIMIDATION OF INDIVIDUALS WHO QUESTION THE WISDOM OF THE NEW ADMINISTRATIVE POLICIES ARE DEEPLY DISTURBING.

WE ALL RECOGNIZE THE NEED TO REDUCE THE FEDERAL BUDGET, BUT THE OCEAN PROGRAMS HAVE CARRIED MORE THAN THEIR SHARE OF THIS BURDEN. THIS IS NOT A BIG BUDGET BUT IT IS A MOST IMPORTANT ONE. THE EROSION OF NOAA MUST BE STOPPED. CUTS HAVE LONG AGO TAKEN THE FAT OUT OF NOAA AND NOW GO RIGHT TO THE BONE.

I CANNOT HELP BUT NOTE WITH IRONY THAT THE ADMINISTRATION HAS DECLARED 1984 THE "YEAR OF THE OCEANS". AFTER REVIEWING THE SITUATION AT NOAA, I'M SUPRISED THAT WE ARE NOT BEING ASKED TO CELEBRATE "THE FINAL YEAR OF THE OCEANS".

INTRODUCTION OF MEMBERS AND WITNESSES

Senator WEICKER. Senator Inouye?

Senator INOUYE. Mr. Chairman, I wish to speak on an $18,000 item.

Senator WEICKER. Do you want to do that? We can do that now or can I let John, the Administrator, give his opening statement?

Senator INOUYE. This is on NOAA. He needs to make an opening statement.

Senator WEICKER. Does anybody else here want to make an opening statement?

Senator STEVENS. No. Fine.

Dr. BYRNE. Thank you very much, Mr. Chairman.

I have submitted an opening statement for the record, but I would like to highlight that testimony.

I share with you your enthusiasm for the oceans, and I share with you your enthusiasm for the NOAA. It is a superb agency, and I have been nothing but impressed with the dedication of the people in NOAA. I think if anything, this administration has recognized the role that NOAA can play in the Department of Commerce, and a lot of the things that have happened, have happened as a result of that recognition as an attempt to help achieve the goals that the Department of Commerce and NOAA have laid out for themselves.

1985 REQUEST

Today, it is my opportunity to present to you the 1985 budget which we are requesting for the National Oceanic and Atmospheric Administration. The total program level is $928 million. However, as a result of other financing, we are requesting an appropriation of $899.3 million. These funds, we believe, will enable NOAA to carry out its mandated responsibilities and to support high priority initiatives.

I think as I say this, I should stress to you at this time that this represents a sincere effort on NOAA's part to help in reducing the Nation's budget deficit.

Before I turn to the actual budget comments, I would like to outline some of the changes that have taken place during the past year. These are changes which have focused primarily on improving the efficiency by which NOAA provides service and makes its products available to the public.

There have been several of these. During the past year, a cooperative effort between NOAA and the Department of Commerce has yielded a consolidation of Department-wide administrative support functions in the field areas. We think this effort has been productive. We recognize that there have been problems, startup problems, but we think these are rapidly being resolved.

During this period, four regional administrative support centers have been created in Seattle, Wash.; Boulder, Colo.; Kansas City, Mo.; and Norfolk, Va. We are presently looking at implementing a similar administrative support center here in the Nation's capital. It is our belief that this type of administrative structure is one which could serve other

Federal agencies, as well, and we think that this would serve as a model for other Federal departments and agencies.

We recognized last year that NOAA has a great many services and products that users of the ocean could find good use for. They are produced by a variety of different units within the agency. They are frequently difficult to access from outside the agency. In October, we opened the first Ocean Service Center in Seattle, Wash. This was a scheme by which we would put together in one place a complete suite, or access to a complete suite, of NOAA's ocean environmental products and services. We actually co-located staff from the various line organizations within NOAA to make it easier for users to obtain whatever service or information NOAA had available.

At the present time, we are evaluating the success of this center concept. At this point are optimistic that it has been successful and could result in an expansion for further delivery of such NOAA services in other areas. That evaluation will be completed during this month.

We also recognized the need to interface, to interact, to a greater degree with major corporate entities throughout the United States to make sure that the service we are providing is what is needed and to improve that service. As a result, we created an Office of Business Affairs, and we anticipate that it will be particularly effective in providing that kind of a liaison.

We have also created, following the Department of Agriculture and the Land Grant College concept, a NOAA extension program which will serve all of the users, whether they are representative of corporate structures or of individuals. We think that both of these actions will go a long way toward improving our delivery of service so that we will get to the people, to all of the people who need our services and products, in the most effective way.

Our 1985 budget request follows a structure that we set up here in the past year or two in which we look at five major units, an Ocean and Coastal Unit; Marine Fishery Resources; Atmospheric; Satellite and Environmental Data and Information; and then Program Support. I would like to say a few words on each of these.

OCEAN AND COASTAL PROGRAMS

In the area of Ocean and Coastal programs, we are requesting $106.1 million for such activities. There are some programs which are slated for elimination. For example, no funds are being requested for State assistance grants under the Coastal Zone Management Program. We feel, as we have felt in the past, that the overall Federal program has achieved its objectives. Twenty-eight States covering approximately 90 percent of the coastline have federally approved programs.

The program, in our judgment, has been a success and has achieved its goals. We feel the same way about the Sea Grant Program. I think no one argues with the success of the Sea Grant Program. However, we do feel that it is time, because of the regional and local activities, and the activities which are supportive directly of industry and the private sector, for other sources of funds to be found to support Sea Grant activities. These could come from industry or from local sources.

So there is no funding requested for the Sea Grant Program.

Senator WEICKER. I am going to read that back to you when you become president of Oregon State University. [Laughter.]

Mr. BYRNE. I suspect you won't have to read it back, Mr. Chairman. A number of people already have. [Laughter.]

There have been programs which we feel have fulfilled their original goals, and I have mentioned two of these. There are some which have succeeded in providing a sufficient base of knowledge or have reached a stage where closely related efforts are being conducted by other Federal agencies. These are research programs which we feel can be terminated at this time. We do intend to continue other research-related activities with regard to the ocean, however, and one of these is one we refer to as the Tropical Ocean Global Atmosphere Program, frequently referred to as the TOGA Program. During the past 2 years, we have certainly learned a great deal about the effects of El Nino and about the interaction of the ocean and the atmosphere in general through a program which was a precursor to the TOGA Program. We anticipate continuing the TOGA effort.

In the area of our services and products, we have, during the past, proposed an increase in the prices for nautical and aeronautical charts. We will propose that, however, on a different base. What we are looking at here is a scheme which would reflect a greater percentage of the actual costs of providing the charts without attempting to include all of the costs required for the production of charts. This program, which is a 3-year program, would increase the prices of the charts to cover the cost of the actual production and the construction of the maps and charts. Over a period of 3 years, the prices would escalate to a level which is about equivalent to what other countries are presently charging for marine charts.

This would require legislation, and this has been cleared by the Office of Management and Budget and transmitted to the Congress in mid-March.

MARINE FISHERY RESOURCE PROGRAM

In the area of marine fishery resources, we are requesting $99.2 million. This amount includes $4½ million for the Foreign Fishing Observer Fund, $1.8 million for the Fisherman's Guarantee Fund and a quarter of a million dollars for the Fisherman's Contingency Fund.

The request reflects savings of about $53.9 million by reducing or terminating what we consider to be lower priority programs which don't directly support the Fishery Services's management of living marine resource; which benefit specific groups or regions of the country; or which could be conducted by the private sector. As we are doing throughout NOAA, we will focus our fisheries program activities on continuing essential research and on the provision of products and services which we believe only the Federal Government can and should provide.

Collection of information, and the analysis of that information, will be directed toward fisheries and protected species work, toward stock assessment services and on catch data and industry economic information.

We believe we can substitute charter vessels for some of the NOAA vessels used to conduct fisheries research. That is also reflected in the budget.

As we look at the management of the fisheries, when we first moved into this, we anticipated it would be necessary to conduct about 80 fisheries management plans. With the experience that we have gained over the last 5 or 6 years, we recognize that we don't need 80 fisheries management plans, we probably can do the job with about 40. So far, we have about 31 FMP's, [fisheries management plans], in place, or we will have them in place by the end of 1984. Of course, we also plan to continue our basic management programs for the protection of marine mammals and endangered species.

COLUMBIA RIVER SALMON HATCHERIES

There are some areas which have been troublesome in the past, and we have taken a new approach on some of these. One of these is a matter of funding the Columbia River salmon hatcheries. We have proposed that funding be taken over for the Columbia River hatcheries by the Bonneville Power Administration, so the cost can be included in the electric power rates.

State and industry programs will maintain only core product quality and safety activities. These activities will address our concern and responsibility in the area of seafood-related public health and safety.

Over the past several years, disbursements from the Fishing Vessel and Gear Damage Compensation Fund have been less than the fees collected and appropriated. For that reason, we are not requesting an appropriation for those funds at this time. This situation has generated carryover funds which are sufficient to pay the anticipated claims without seeking an appropriation in the 1985 budget.

As part of the management activities that involve foreign vessels, we have had a Foreign Fishing Observer Program. We intend to institute the Supplemental Observer Coverage Program in 1985. Basically, what this means is that foreign governments will have the opportunity to contract directly for observer services from a list of contractors approved by the Secretary of Commerce. This enables NOAA to reduce its 1985 appropriations request for the Foreign Fishing Observer Fund by about $7.4 million.

The appropriation request of $4.5 million in 1985, combined with the supplemental program, will virtually provide 100 percent of observer coverage in the FCZ.

ATMOSPHERIC PROGRAMS

For atmospheric programs that we support, we are requesting $358.2 million. Savings will be realized primarily through a consolidation of administrative services and through the curtailment of programs that benefit specific user groups.

We anticipate the merging of the Pacific region headquarters with the Alaska region headquarters, and eliminating the Southern region headquarters while augmenting the staff as Eastern and Central regional headquarters.

I think I should highlight here that these are administrative changes and will in no way affect the actual service which is provided. We anticipate the same type of management change with regard to the regional hydrologist staffs. Again, we anticipate maintaining the same sort of service by making the savings through administration. There are other changes that are reflected in administrative and cost savings that will not directly affect the service we provide. Some of these include reductions of staff at about 29 weather service forecast offices. These stations will still stay open 24 hours a day to continue all forecast and warning services. The specific services that we would cut back on are things such as agricultural weather, fruit frost and fire weather programs. Here again, these are activities which, because of their specific nature, we would anticipate private users would pick up the cost for.

In terms of moving to the future, we see the next generation Weather Radar Program continuing in its validation phase. We anticipate continuing our share of the Acid Rain Program

In the area of satellite environmental data and information, we are requesting a budget of $271.7 million. This permits a multiyear upgrade in the instrumentation for the next generation of the GOES satellite.

[The statement of Dr. Byrne follows:]

PREPARED STATEMENT OF JOHN V. BYRNE
ADMINISTRATOR
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. Chairman and Members of the Committee:

I am pleased to appear before you in support of the 1985 budget request for the National Oceanic and Atmospheric Administration (NOAA). The total program level is $928 million; however, proposed financing from other sources has reduced this amount to an appropriation request of $899.3 million. These funds will enable NOAA to carry out its mandated responsibilities and support high-priority initiatives.

Before turning to the budget details, I would like to inform the Committee of several changes which have occurred in our operations since my last appearance before the committee. During the past year, a cooperative effort between NOAA and the Department of Commerce has been undertaken to consolidate department-wide administrative support functions in the field. This effort has been productive. We have established four Regional Administrative Support Centers (RASC's) in Seattle, Washington; Boulder, Colorado; Kansas City, Missouri; and Norfolk, Virginia. The RASC's are working well, and we have plans to establish a similar Administrative Support Center in the national capital area to service NOAA components in this area. I fully support the concept of streamlining administrative support functions where economically feasible. We believe our experience will prove to be a good model for other Federal Departments and agencies.

In our quest to improve services to our constituents, we are requesting a prototype Ocean Service Center in Seattle, Washington, which brings together in one place a complete suite of NOAA ocean environmental products and services, including operational and retrospective information. By colocating the staff, we have made it easier for users to obtain ocean related data and information, and marine weather forecasts. We are in the process of evaluating the concept to see if this approach will enable us to improve the delivery of NOAA services.

In addition, I have established an Office of Business Affairs and a NOAA Extension Program Office to assure that we are reaching out to provide the necessary services and coordination to our constituents. These are very small offices; however, I believe they will perform important functions. Primarily, they will serve to enhance the delivery of NOAA services to our constitutents.

1985 REQUEST

Under our revised budget structure, NOAA programs are grouped into five major areas. I would like now to highlight some of the more significant program changes in each of these areas for 1985.

OCEAN AND COASTAL PROGRAMS

We are requesting $106,132,000 for ocean and coastal activities.

No funds are being requested for Coastal Zone Management state assistance program grants. Overall the Federal program has achieved its objectives. Twenty-eight states covering ninety percent of the coastline have Federally-approved programs.

The Sea Grant program, which has achieved its goal of encouraging the academic community to develop its expertise in marine research, is proposed for termination in 1985. We believe this activity should be directly supported by the interests it serves. I am confident that Sea Grant related research will continue in the academic community through alternate funding sources from both the private sector and directly through other government programs.

We are proposing to reduce or terminate several ocean research and assessment programs which have fulfilled their original goals; succeeded in providing a sufficient base of knowledge; or reached a stage where closely related efforts are being conducted by other Federal agencies. We will, however, continue ocean research supporting public health and safety and continue our participation in the international Tropical Ocean Global Atmosphere (TOGA) program, formerly called OACIS, which could lead to the ability to understand the effects of El Nino and to predict short-term regional climate changes over North America.

We are also proposing to gradually increase our prices for nautical and aeronautical charts, and for tides and currents products, to reflect a greater percentage of the actual costs of providing these services. These products and services benefit specific users and their costs should not be borne by the general taxpayer. Our proposal has been substantially revised since last year. The proposal will increase prices over three years to cover the costs of producing the maps and charts. This proposal does not include the cost of data acquisition in the projected prices. At the end of three years we project chart prices which will be in line with what other countries are charging for their products. The legislation has been cleared and was transmitted to the Congress on March 16, 1984.

MARINE FISHERY RESOURCE PROGRAMS

For fishery activities, we are requesting $99,181,000. This amount includes $4,500,000 for the Foreign Fishing Observer Fund; $1,800,000 for the Fishermen's Guaranty Fund; and $250,000 for the Fishermen's Contingency Fund.

Our request reflects savings of $53,891,000 by reducing or terminating lower priority programs which do not support directly NMFS management of living marine resources; which benefit specific groups or regions of the country; or which should be conducted by the private sector, state and local governments. As we are doing throughout NOAA, we will focus our fisheries program activites on continuing essential research and the provision of products and services which only the Federal government can and should provide.

Information collection and analyses activities will be directed toward fishery and protected species work, stock assessment services, and catch-data and industry economic information. We also believe we can substitute charter ships for conducting surveys and other research on a cost-effective basis. We also have identified savings by terminating resource information activities which are not required to support ongoing fisheries management decisions.

We will continue to emphasize regulatory reform in our fisheries conservation and management programs. We are working with the Regional Fishery Management Councils to determine which Fishery Management Plans (FMP's) can be consolidated. We now estimate that only 40 FMP's will be required compared to the original estimate of 80. The Councils will be shifting from plan development to plan implementation and monitoring as 31 FMP's will be in place by the end of FY 1984. We will also continue our basic management programs for the protection of marine mammals and endangered species; however, we expect to realize savings by strengthening our partnership with the states.

As part of our effort to reduce Federal funding in areas where the program responsibility resides with the region, we are proposing to terminate NOAA funding for the operation and maintenance of the Columbia River hatcheries. Legislation has been introduced to transfer the cost of these hatcheries to the Bonneville Power Administration, so that costs can be included in the electric power rates.

Our state and industry programs will maintain core product quality and safety activities. These activities will address our concern and responsibility in the area of seafood-related public health and safety.

We are not requesting an appropriation for the Fishing Vessel and Gear Damage Compensation Fund. Over the past several years, disbursements from the Fund have been less than the fees collected and appropriated. This situation has generated carryover funds sufficient to pay anticipated claims without seeking an appropriation for FY 1985.

Pursuant to recent amendments to the Magnuson Fishery Conservation and Management Act, NOAA intends to institute the supplemental observer coverage program in FY 1985. Foreign governments or operators fishing within the Fishery Conservation Zone will be able to contract directly for observer services from contractors approved by the Secretary of Commerce. This will allow NOAA to reduce its FY 1985 appropriation request for the Foreign Fishing Observer Fund by $7,380,000 from the FY 1984 appropriated level. The appropriation request of $4,500,000 in FY 1985, combined with the supplemental program, will provide over 90% observer coverage in the FCZ.

ATMOSPHERIC PROGRAMS

For our atmospheric programs, $358,214,000 is requested.

In the public warning and forecast services, savings will be realized through consolidation of administrative services, and through the curtailment of programs that benefit specific user groups. Major consolidations include merging the Pacific Region Headquarters with the Alaska Region Headquarters at Anchorage, Alaska; augmenting staff at the Eastern and Central Region Headquarters to assume the managerial, administrative and engineering responsibilities of the Southern Region; and eliminating managerial Regional Hydrologist staffs at the four Regional Headquarters in the contiguous U.S.. These consolidations will streamline the administrative and managerial functions of the NWS without affecting weather forecasts.

Also included are selected staff reductions at 29 Weather Service Forecast Offices which will produce savings while maintaining the quality of warnings and forecasts. Stations will remain open 24 hours a day and will continue all current forecast and warning services.

The NWS will continue to provide generalized public service weather forecasts to support the agriculture and forestry industries, but will reduce or discontinue dedicated services that benefit specific user groups such as the agricultural weather, fruit frost, and fire weather programs. These services not only benefit specific user groups, but are services that can be provided by the private meteorological industry.

The Next Generation Weather Radar (NEXRAD) program will continue validation phase activities which will lead to improved data on tornadoes and severe storms.

In the atmospheric and hydrological research area, NOAA is committed to conduct research which supports essential services that protect life and property. NOAA's FY 1985 budget reflects our continued commitment to research in the areas of climate, particularly in terms of air-sea interactions, and air quality. We will continue to fulfill our responsibilities for acid rain research in the area of natural sources, dry deposition, and atmospheric processes. Several program areas in meteorological and atmospheric climate research, and solar-terrestrial services and research, will be reduced. In these cases alternative funding sources are available, research is essentially complete, or the program is not a NOAA responsibility.

SATELLITE AND ENVIRONMENTAL DATA AND INFORMATION SERVICES

For the satellite and environmental data and information services, we are requesting $271,669,000.

We are proposing a multi-year upgrade in the instrumentation for the next generation of GOES satellite. The FY 1985 cost will be $4 million. This will improve the National Weather Service's short-term forecasts and warnings, particularly in severe weather.

Other changes in the GOES system total $32,765,000. This will maintain the two-satellite system and improve the data collected for the NOAA weather forecast and warning service through the use of the VISSR Atmospheric Sounder (VAS). The capability of the VAS to provide data needed for more comprehensive and timely atmospheric observations has been demonstrated. As a result of NASA's termination of its expendable launch vehicle programs, NOAA must assume the full cost of maintaining the capability to launch the GOES G and H spacecraft on Delta vehicles in FY 1986. The sole user costs for FY 1985 included in the GOES increase is $14,000,000.

For the polar orbiting system, a savings of $47 million in 1985 will be realized by converting to a one-polar system. This reduction will result in over $700 million in savings between 1985 and 1995 and will not degrade substantially the quality of weather forecasts.

An increase of $3,700,000 is required to continue the maintenance and operation of the Gilmore Creek Command and Data Acquisition station because NOAA will assume responsibility for the site and operate it alone when NASA terminates operation of its Satellite Tracking and Data Network on October 1, 1984.

For the LANDSAT System, an increase of $8,982,000 is requested to cover the costs of operations for FY 1985. Reimbursable payments from Federal agencies will provide an additional $8 million toward operations.

PROGRAM SUPPORT

For the program support services, we are requesting $92,804,000. As part of our effort to streamline administrative and management functions, we are reassigning and consolidating management and support functions throughout NOAA. This will produce a projected savings of $4.8 million.

We are also proposing to terminate the National Advisory Committee on th

Oceans and Atmosphere (NACOA), since its functions are covered by other Federal agencies, or could be performed by other existing advisory committees.

Our efforts to charter ship time, improve the scheduling of NOAA vessels for in-house work, and to deactivate vessels not fully utilized will also yield projected savings of $10,926,000. An additional $4,338,000 is requested in the Fisheries budget for charter ship time or for selective use of NMFS fishing research vessels when charters may not be available.

NOAA fully supports the Administration's policy of relying on commercial sources whenever commercial/industrial products and services can be procured more economically from the private sector than through the use of Federal employees and Government facilities. Our FY 1985 budget requests identifies $2.5M in already identified savings resulting from the A-76 process as well as $6.1M in anticipated savings which will result from studies already underway and scheduled for completion by the end of this year.

CONCLUSION

In summary, I believe our budget represents a balanced approach, maintaining and where necessary strengthening essential services while exercising fiscal restraint. We have instituted efficiencies in the way we operate. We have begun new programs to improve the services we provide to users of our products. We have identified areas where it is appropriate for the Federal government to step back from its previous role and turn responsibility over to others. And, above all, we are continuing our course of improving those services vital to protecting public safety.

This budget proposes changes from the way we operated in the past, but these are changes for the better. I can say with confidence that NOAA has a bright future.

Senator WEICKER. John, I am going to interrupt you because they have already rung for the vote. I thought it was going to take place at 2:30. I would like to give an opportunity before the bells ring. I think there are Senators that won't be able to return. I would like to give them an opportunity to ask questions now.

Dan?

Senator INOUYE. Mr. Chairman, I am almost embarrassed to bring this up; it is only $18,000.

Senator BUMPERS. I vote aye.

Senator INOUYE. Thank you.

ATMOSPHERIC PROGRAMS

Last week this committee was notified that they were going to abolish one position and reduce coverage at the Hilo, Hawaii weather forecast office from 24 to 20 hours. This is scheduled to be effective today, but thanks to the committee, it was postponed until after today's hearing. I think the reductions are ill-conceived, unwarranted. The Hilo office has the task of receiving, processing, and disseminating weather satellite information to the largest of our islands. It is solely responsible for the issuing of severe weather warnings to an island which is frequently hit with severe and unpredictable tropical weather fronts and geological actions such as volcanos, and there are not too many volcanos on this earth.

To reduce this staff and to shut the office for 4 hours a day, will create a gap that may threaten the vital forecasts needed by the island's residents.

The office is also indispensable in providing information to the scientific astronomy installations on Mauna Kea and Mauna Loa. All this will be lost because we are going to save $18,000. Last year the island of Kauai suffered an unusual weather condition, a hurricane, something that very seldom hits the Hawaiian chain. If it weren't for the Honolulu and the Hilo offices, and if this cut had been in effect at that time, the people of Kauai might not have had timely warning.

Incidentally, that hurricane literally destroyed our tourist industry, which is finally up on its feet again on the Island of Kauai, with damages in the untold millions. Fortunately, no one was killed.

I would hope that something can be done to bring about $18,000. Last night I was listening to the radio, and they were talking about several things this government carried on with taxpayers' money. There was a research program to decide whether fish like gin or vodka better. I don't know why we have to test fish to drink gin or vodka. The Army had a test to determine whether soldiers preferred to use umbrellas or raincoats, and about a half a million dollars was spent to bring indoor weather instruments that are outdoors, because if they are outdoors and it is raining, personnel will get wet. I'm certain we can find $18,000 and save a few lives in the Hawaiian chain.

Thank you.

[The statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE

U.S. SENATOR FROM HAWAII

Mr. Chairman, last week the committee was notified by NOAA that it planned to close the Pacific Ocean Weather Service office on Johnston Island and to abolish one position and reduce hours at the Hilo, Hawaii Weather Service Forecasting Office. These cuts were scheduled to take effect today, giving the committee only 1 week's notice of their implementation.

I was most disturbed to learn of NOAA's plans, especially because the short time frame effectively prevented adequate evaluation of this reprogramming request through the proper congressional channels.

I use the term "reprogramming request" purposely here, because these cuts clearly involve the relocation of NOAA employees and the termination of NOAA activities, and as such require congressional approval. Fortunately, at the subcommittee's request, NOAA agreed to delay these actions until after today's hearing.

It is my belief that these proposed reductions are ill-conceived and unwarranted. In the case of the Hilo, Hawaii Weather Service Forecasting Office, we would reduce the effectiveness of an office that has the important task of receiving, processing, and disseminating weather satellite information to the largest of the Hawaiian islands.

It is solely responsible for the issuing of weather warnings to an island frequently hit with severe and unpredictable tropical weather fronts, and geologic actions that affect weather conditions. To reduce staff and shut the office for 4 hours a day, as NOAA plans to do, would create a coverage gap and threaten to delay vital forecasts needed by the island's residents. The Hilo office also provides indispensible detailed information to the scientific astronomy installations on the Mauna Kea and Mauna Loa volcanic summits. It seems to me that the importance of these services far outweighs the $18,000 savings that would be realized by the cuts at Hilo.

The importance of maintaining 24-hour staffing at this Nation's Weather Service forecast offices was affirmed by this subcommittee last year when $1.17 million was added for this purpose in the conference committee on the fiscal year 1984 NOAA appropriations bill. Thus, I believe it is clear that NOAA's current plans to cut staffing and hours of coverage at the Hilo station directly contradict congressional intent.

I have discussed my opposition to the proposed NOAA cuts with Chairman Laxalt, and he has expressed to me his desire to reach a satisfactory accommodation on the matter.

Therefore, I wish to request that NOAA continue to delay any implementation of these cuts until the subcommittee does take action on the reprogramming request, probably within the next few days. I hope that the chairman will seriously consider this request, which is directed toward avoiding the needless endangerment of citizens who depend on our vital weather services.

Senator WEICKER. Thank you, Senator.

Senator INOUYE. I am always reasonable, $18,000.

Senator WEICKER. Senator Stevens?

Senator STEVENS. I am sad to see you go, Dr. Byrne, although I appreciate where you are going. That was my first university, but I have just a couple of questions, and I would like to submit some, Mr. Chairman.

MARINE FISHERIES RESOURCE PROGRAMS

We authorized $2 million for improvement to the facilities of the Pribilof Islands in the Pribilof Islands legislation. I note that that has not been requested. Do you think that those funds will be needed to bring the facilities that will be turned over to the island people under that legislation up to the health and safety codes before they have finally accepted them?

Dr. BYRNE. We have an expert on the Pribilof Islands with us. So if I could ask Dr. Calio to respond to that question. He has been there.

Mr. CALIO. As you know, Senator, we spent in the 1983 and 1984 budgets, a reasonable amount of funds to refurbish the facilities up there. We recently conducted a safety survey on the islands for the transfer of those facilities, which has taken place already. I have not seen any proposals currently that request those kinds of funds for rehabilitation of facilities on the islands. So consequently, we have not requested that amount of money.

As you know, we did do some modifications on facilities before we transfered those facilities when we collectively had the $20 million trust fund established.

Senator STEVENS. When the Federal Government operated there, they didn't comply with State safety and State health codes, but now the native people have to comply with those. I am informed that there has been nothing done to attempt to comply with the State health and safety codes.

Are you going to take the position that you don't have to comply with them and that their compliance is their business, or what is going to happen?

Mr. CALIO. We have tried to work out reasonable agreements or compromises between our requirements and their requirements relative to meeting State codes. I thought we had reached an agreement with respect to those facilities, and apparently we haven't. So I will go back and take a look at that.

But in our current assessment, we are doing what we should have been doing with those facilities.

Senator STEVENS. I should think you would want to have the function of checking with the State people to see what they are going to require before you leave. It was my understanding that that was one of the considerations that led to the approval of that Act, was that the Federal Government would turn the facilities over to those people in a position so they would not have to expend their funds to bring the facilities up to the level of the State fire and safety code.

Mr. CALIO. I agree with you on that principle, and I will go back and rework that with the State, because I thought we had actually done that.

PROBLEMS WITH REGIONAL COUNCILS

Senator STEVENS. Dr. Byrne, let me ask you. I have been increasingly worried that there is a breakdown of communications and relationship between the regional councils established under the 200 Mile Limit bill and your NOAA agencies. As a matter of fact, I am considering having an oversight hearing of the legislative subcommittee to give the councils an opportunity to be heard here in Washington.

But do you feel that there is that breakdown, and have you had any review of the law to determine whether we ought to either change the law or beef up the funding? What is the basic problem there?

Dr. BYRNE. I'm not sure of the problems to which you are referring. It has been my sense that we have had good rapport, good relationships with the councils. What we have tried to do as a result, I think, of the last review, the last amendment to the Magnuson Act, was to shorten the time that it takes to produce a plan by having closer interaction between Fishery Service personnel and the councils as they develop plans.

The reduction in the budget is really a reflection of the recognition that we don't require as many plans or won't require as many plans as we had originally anticipated. But if there are problems that are unusual, I am certain we would like to have these brought to our attention. I'm not aware of them.

Senator STEVENS. The feeling exists out there, I have visited several of the councils this last year, that where there has been a problem developed, the Federal agency has just taken back unto itself the power that was given to the councils. There seems to me to be a breakdown. I would urge you, before you depart, to help us restore the relationship. I think it is still a very valuable tool for both State and local governments to have the councils be effective in their areas.

Dr. BYRNE. I agree with you. I think it is an excellent new technique in managing on a regional basis a very important resource.

Senator STEVENS. Mr. Chairman, I have six questions I would like to submit for the record, please.

Senator WEICKER. The questions will be submitted for response to the record.

FUNDING FOR CATFISH FARM

Senator STEVENS. Thank you.

Senator WEICKER. I think we best leave right now, unless you have a quick question right now.

Senator Bumpers. Mr. Chairman, NOAA keeps zipping my catfish farm, and you keep going along with me in fighting it to keep from listening to me speak. So I assume we are going to fund it again this year.

Senator WEICKER. We are going to have a catfish farm.

Senator BUMPERS. Why do you keep doing that, Dr. Byrne? That is a $25 million industry in my State.

Dr. BYRNE. Our sense is that aquaculture has developed to a point where it ought to be picked up by the private sector and commercial interests rather than be maintained by the Federal Government.

Senator BUMPERS. We have increased production from 1200 pounds per acre to between 3500 and 6000 pounds per acre as a result of this fish farm.

Senator WEICKER. Do you know why I think this is important, and let me tell you this for all of us interested in the oceans. It is great for all of us that come from the coastal States, but you know, there are 50 States, including ones like Arkansas, where we are asking Senators to go ahead and vote for things that relate to supposed coastal States, and there is some small item that deals with your jurisdiction. It seems to me that it would be pretty hard for us not to assist them.

Senator **Bumpers**. Thank you, Mr. Chairman.

Senator **Weicker**. Thank you.

The committee will recess for 10 minutes while we go up-stairs and vote.

[A brief recess was taken.]

RESEARCH PROGRAMS

Senator **Weicker**. The Administration proposes to increase overall Federal R&D funding by 14 percent in fiscal year 1984 and 1985. For example, EPA and the National Science Foundation's R&D requests focus on the same types of environmental and natural science and research that NOAA performed of being enhanced by 12 and 14 percent respectively. NOAA's budget, R&D budget is being cut by 38 percent. How do you explain that?

Dr. **Byrne**. I think a number of the programs we have had underway in the past have gone through the collection and analysis stage and through implementation. We have focused on research programs that we feel support societal needs where we have yet to be satisfied.

Senator **Weicker**. The proposed reductions for NOAA's ocean and coastal programs and fisheries research programs total more than $120 million. Speaking for myself, I don't think these were adequately funded to begin with. I would like an explanation of that, John. I don't understand.

Dr. **Byrne**. I think actually, you would have to look probably project by project in this case, which we can do, or we can provide this for the record, however you would like it.

Senator **Weicker**. We can provide it for the record.

Dr. **Byrne**. I think there is a basic concept—we have operated under, a fundamental philosophy that, where programs can be picked up by the private sector if they are local in nature, they should be eliminated from the Federal budget so that those other sectors can pick them up.

We have looked at programs where user fees, if they are for specific purposes, might be imposed. We have taken a position that where research is coming to a culmination that it should be phased out rather than continued indefinitely, which is something which is relatively easy to do with research programs.

So I think in terms of, well, taking a rather hardline management approach to it, which is what we have attempted to do, that does result in a reduced research budget.

Senator **Weicker**. Let me say this: The one argument that I don't accept is that all these functions are being taken over by the private sector. I have noticed a distinct absence of the private sector as to most of the matters that NOAA is engaged upon, and I certainly don't see the funds being generated by the States. Indeed, it is questionable as to what effect that should have as far as you are dealing with a body of water that knows no boundary. That seems to be properly a Federal responsibility.

I hear these words coming from the Reagan administration as to how the private sector is going to pick it up, volunteers are going to pick it up, the State is going to pick it up. I don't understand how that really works or, indeed, has a basis in fact. I would like an explanation for it.

Dr. BYRNE. I think part of the reason is that we have not gotten to the point where we have been able to eliminate those programs through the interaction between the legislative and executive branches, and as long as these programs, if I could take agricultural weather or fruit frost warnings as examples, remain in the budget, the private sector is not about to move in and take them over. It is our feeling that some of these things really do lend themselves to development by the private sector, and if the government would step back completely, that we would, then, see the private sector move in with great enthusiasm.

OCEAN AND COASTAL PROGRAMS

In setting up the Ocean Service Center in Seattle, we have worked very closely with the private sector to ensure that we don't compete with what they might do but, in fact, provide the kinds of information from which they can develop value-added products and services, and we are beginning to see significant movement in this direction.

The interest is also increasing as a result of the business liaison office that we have opened up. One of the things that we note is that although we are very familiar with what NOAA does, and I think most of the people in the government are, the private sector, in some cases, has been largely unaware and, in fact, in some cases, has been duplicating what the government has been doing.

So I think that as we continue to take this approach of becoming more involved with the private sector and with the business community, that we will see a greater increase in this direction.

SEA GRANT PROGRAM

Senator WEICKER. Is that part of the reasoning for eliminating Sea Grant? You feel industry is going to move in there?

Dr. BYRNE. I think if Sea Grant were eliminated, we would see significant portions of Sea Grant where industry did move in. I will admit that there will also be other elements of the Sea Grant program which, in some cases, would be supported by the States, probably in other States they would have to be picked up by private interests but that becomes a question of setting priorities within an individual State.

But I think that with the size of the ocean business interests now in this country and the recognition of success of the Sea Grant Program and, in fact, demonstrated success of some Sea Grant institutions in acquiring private funds, that we could very definitely see a movement by the private sector.

ATMOSPHERIC PROGRAMS

Senator WEICKER. Aside from ocean drilling of oil, where is this great new entry of private sector in the ocean? I know that the private sector was involved in the 1960's, and when they found out it wasn't commercially profitable, got out. With the exception, as I say, of the oil situation, I don't see where the private sector is coming back in again.

Dr. **Byrne.** I think that in the 1960's, we did have a lot of visibility with respect to high technology, high engineering elements of the business community taking a look at what the opportunities might be. There was a rash, for example, of development of submersibles for conducting undersea engineering activities. I think at this time if we were to look to see where the main interests are coming from, it is in the service category rather than in the production category.

Now, you have mentioned the hydrocarbon industry, and certainly, that is a good example. It is also an example, I think, of an industry in which other private sector development has taken place in providing predictive capability for ocean conditions, for weather. Special weather services and so on draw to a great extent on information that NOAA already produces.

There are lots of other areas, of course. We have had, during the last several years, considerable interest developed in the whole matter of polymetallic sulfides. I think that as that thinking has matured, we recognize that this is not a possibility for development in the immediate future but may be one some years hence. I think that in terms of, again, service activities, probably the biggest industry that we will see develop in the near future is the recreational industry. Again, here is one where much of what NOAA does can be used as a business from which industry can develop or private sector services can develop.

RESPONSE OF INDUSTRY TO SEA GRANT PROGRAM

Senator **Weicker.** Have you met with industry representatives regarding funding for Sea Grant to see what their response was?

Dr. **Byrne.** We discussed this, not in a systematic way, but rather in what I might call an ad hoc way with a number of representatives of, let's call them Sea Grant-related private ventures. Some are enthusiastic. Others would prefer to have the Government continue to do the research in these activities and benefit from that research after it is done.

But on the other hand, if we look across the board at our Sea Grant support, much of the non-Federal match is coming from the private sector, which, I think, is a tangible indication that they would pick up significant portions of the research.

Senator **Weicker.** Do you think we know more, less, or the same about the moon as we know about the bottom of the ocean?

Dr. **Byrne.** The honest answer, Mr. Chairman, is I don't know. I think we know more about the bottom of the ocean than we do about the moon.

Senator **Weicker.** Do you think it is a close call?

Dr. **Byrne.** Not if I think about it a little bit. You know, when we consider what we know about the geologic structure of the margins of the continents; the margins of the ocean basin; when we consider what we have been able to do with the imaqery and the data obtained from

SEASAT alone, in terms of defining bottom features, using fairly sophisticated research, I think we are at the point where we really do know more about the ocean than we do about the moon.

So I guess the answer to your question is no, I don't think it's a close call.

OCEAN AND COASTAL PROGRAMS

Senator WEICKER. Japan's exclusive economic zone ranks sixth in the world in terms of area. In 1983, Japan had a total budget of $20.9 million for undersea activities, and approximately $13 million of that budget was related to research and construction on submersibles and semisubmersibles. Yet, the United States, with the largest exclusive economic zone in the world, had an fiscal year 1983 budget of $5.9 million for its undersea research program. That program is slated for termination in fiscal year 1985.

Why do you think the difference in approach?

Dr. BYRNE. I can only guess at that, Mr. Chairman. I think that what we need to look at to make truly comparable judgments is the role of the private sector in Japan as well as the government and do the same here. Without doing that, I'm really not prepared to come to a conclusion with regard to whether we are ahead or they are ahead. I think the development of oceanographic and marine research programs in the two countries would clearly indicate that the United States is far ahead of Japan. With respect to this particular element of the marine research program without, I think, looking at the combination of Federal and private sector, we can't really make that judgment.

Senator WEICKER. NOAA recently acquired the undersea habitat AEGIR and is in the process of moving it from Hawaii to a new facility in Florida for refurbishing. Nonrecurring costs of $200,000 are proposed for the movement if NURP is terminated, there will be no funds in fiscal year 1985 to set up AEGIR as a movable underwater facility.

Does NOAA continue to plan for support of the program?

Dr. BYRNE. No, we don't.

Senator WEICKER. Who made that decision?

AEGIR PROGRAM

Dr. BYRNE. Specifically with respect to AEGIR?

Senator WEICKER. I know who made the decision to bring AEGIR to the United States; it was the Chairman. So I want to know who made the decision that we don't need to go ahead and fund that.

Dr. BYRNE. The record shows that NOAA made a request for the undersea research program of which AEGIR would be a part of the Department of Commerce, and that the Department of Commerce made a similar, but not totally inclusive, request to the Office of Management and Budget, and this does not appear in the President's budget to Congress. So I think it's clear that the decision was made——

Senator WEICKER. OMB.

Dr. BYRNE. —in consultation with OMB.

Senator WEICKER. Do we have somebody from OMB here who was part of that decisionmaking process? I want to know who the Jules Verne of OMB is. [Laughter.]

I asked these questions in Labor, Health and Human Services on the medical side. I constantly want to know who the doctor is down at OMB who makes all the cuts in NIH. Now I want to know who does the work on the underwater research. Is there a representative from OMB present?

[No response.]

MAKLII PROGRAM

Senator WEICKER. I understand that Japan is trying to lease the submersible MAKLII from the Hawaii program. Has NOAA considered any other joint research projects?

Dr. BYRNE. With Japan?

Senator WEICKER. Yes.

Dr. BYRNE. We are not aware of any, Mr. Chairman. If they are, they are probably very small and in a system someplace, so our answer would be no.

Senator WEICKER. NOAA's responsibilities under a 1978 amendment to the Outer Continental Shelf Lands Act includes "Studies of Underwater Diving Techniques and Equipment Suitable for Protection of Human Safety and Improvement of Diver Performance."

Saturation diving methods, for example, are crucial to underwater research in terms of increased bottom time to perform essential marine studies. How will the research and development necessary for diver safety and performance be maintained if NURP is terminated?

Dr. BYRNE. Our feeling is that research has been completed.

Senator WEICKER. Well, that is going to be nice to know. [Laughter.]

I want everybody to know when you are on the bottom of the ocean floor that nothing further need be learned.

Dr. BYRNE. Let me rephrase it and say NOAA's great surge in that area has been completed.

Senator WEICKER. That is very nice. A decrease of $2 million is proposed to terminate the research program for polymetallic sulfides, which you referred to earlier. As of March 1984, several applications for licenses to conduct deep seabed mining have been received. It would seem industry is at least interested in conducting these preliminary mining activities. Is NOAA required to provide an Environmental Impact Statement where licenses have been approved? Do you anticipate any other licenses will be applied for, or issued during fiscal year 1985?

Dr. BYRNE. I think our assessment is that no, we will not see further leasing development in that area in the very near future, and at such time as that activity begins to pick up again, NOAA will be prepared to be further engaged in the assessment activities associated with it.

Senator WEICKER. Do we have enough baseline data to make decisions on deep seabed mining exploration activities?

Dr. **Byrne.** I think on the manganese nodules we do. We have completed a number of studies there. We are prepared with regulations and licensing techniques for the exploration phase.

ATMOSPHERIC PROGRAMS

Senator **Weicker.** In 1980, Congress created the Interagency Task Force on Acid Precipitation. Based on Task Force recommendations, the administration has requested $55.5 million in fiscal year 1985 for the National Acid Precipitation Assessment Program. Of that $55.5 million, only 4.3 percent is slated for use by NOAA. As the lead atmospheric research agency, shouldn't NOAA's role in the acid rain research area be greater?

Dr. **Byrne.** No. I think that the system set up now, which involves an interagency task group chaired by the Administrator of NOAA, the Administrator of EPA and the Secretary of Agriculture addresses the program in the appropriate way. NOAA's involvement in terms of research is in the area of determining natural sources of acid rain precursors, of investigating atmospheric processes that are particularly important to the acid rain question, and in monitoring deposition.

The budget for this is determined as one of the task group activities. It is our feeling that NOAA is adequately funded.

Much of the funding that will go into the acid rain program is in the area of assessment and also will fit into the area of what ultimately will lead to controls on the production of man-made acid rain precursors.

So the short answer to the question is, we think that we are adequately funded in this area at this time.

MARINE FISHERY RESOURCE PROGRAMS

Senator **Weicker.** NOAA's fiscal year 1985 budget request reduces marine mammal research by $650,000. The decrease includes $350,000 for bowhead whale research, $150,000 for Hawaiian monk seal, $150,000 for Dall's porpoise studies and the IWC observer program. In the Hawaiian monk seal program, almost all field work would be eliminated. The high incidental Dall's porpoise and other marine mammals in Japanese salmon gill netting mandates continuous study.

Why is NOAA cutting this program?

Dr. **Byrne.** I think that we are cutting it back to a level where we think the results of the research will be sufficient to monitor the effects, one, on bowhead whales. There has been a lot of research in that area in the past. The monk seal research has been continued, and I think it is really now at a monitoring stage. I think the same is true with regard to Dall's porpoise. In the case of Dall's porpoises, these are the porpoises that entangle Japanese salmon nets. Much of that research is done in conjunction with the Japanese.

So I think in looking at that particular element of the research program, we would also need to look at the Japanese contribution.

U.S. TRADE DEFICIT FOR FISHERY PRODUCTS

Senator **Weicker**. The net U.S. trade deficit for fishery products was $4.1 billion in 1983, up from $3.4 billion in 1982. It seems to me that if we were succeeding in this area, under your jurisdiction, specifically, of fisheries and the oceans, et cetera, that we seem to be going in the wrong direction as far as the trade deficit is concerned. To me, this is one of the great potentials for the United States. It ought to be a plus, it ought to be something that reduces our trade deficit instead of increasing it yearly. At the present time that certainly is one of the statistics that would speak for increased funding for NOAA's activity here instead of decreased funding.

Dr. **Byrne**. I think there are reasons for this. And I don't have all of the statistics in front of me, but the catch by Americans is definitely increasing. In many cases, the fisheries products or the fish being sold by America to other countries is what we would generally consider to be low value, relatively low value fish, whereas our import, on the other hand, is higher cost, higher value fish. So I think that the increased trade is a very complex situation.

We also see that Americans are eating more seafood than has been the case, which has also been one of our efforts. When these have balanced out, clearly, we would like to see fish contribute to decreasing the deficit in international trade, and I think that as we begin to get more and more progress in that direction, we may see this.

This has been a major goal and will continue to be a major goal, not just of NOAA, but of the Department of Commerce. It is an objective which is recognized at the secretarial level, and it is one we are continuing to work with.

DIADEMA SEA PORCUPINES

Senator **Weicker**. I have one last question, and then I will have other questions for submission to the record. Because this question points up several matters that I feel are important, I would also be anxious to get NOAA's response as to what it is, in your view, as a man of science, yourself.

About a month ago, I was down visiting the Hydrolab facility on the Island of St. Croix. I had occasion to talk to the faculty staff at West Indies Laboratory. I understand that just 2 weeks prior to my arriving there, within a matter of 2 weeks, the entire population of Diadema, sea porcupines, the ones with the long black needles that none of us want to step on, got wiped out; that, indeed, has been occurring throughout the Caribbean from the Coast of Panama and it has swept through the entire area. Within 2 weeks, that particular species was gone. It existed in the thousands, the hundreds of thousands. I think it points up the fragility of life in the oceans and how fast something can go.

Everybody thinks that if we have an oil spill, that some fish might swallow some oil and die and that will be the end of it. They better think twice. If that can happen with a species such as that, just think what can happen to other species which are useful to man and maybe even more delicate.

Did NOAA involve itself in the study of this phenomenon?

Dr. BYRNE. The Diadema?

Senator WEICKER. Yes.

Dr. BYRNE. Do we know anything about Diadema? It may just be that you and I are the only ones in the room who know what Diadema is, but no, we haven't conducted studies as far as I know.

Senator WEICKER. It is my understanding that requests for funding were made by some of the institutions down there which received no response or a negative response. Let me tell you, this is probably the first, of all the scientists that I met down there, it was the first time they have ever seen anything like this. It was unique in their experience. It was as tragic as it was in one sense; from a scientific point of view, it was a once in a lifetime experience. For us to have no knowledge of that, I can't believe that, as far as this Government is concerned.

I know it occurred in the American Virgin Islands in probably February. But this had been coming eastward for the last 2 years. It has swept through the Caribbean starting off the coast of Panama and sweeping through the entire Caribbean, with the American Virgin Islands being the last, at least as far as we know right now, the last act in that scenario.

I would like very much to know it could very well be that you have persons who know who have had contact with this matter. I would like to have them contact me and tell me exactly what has been done. There is nothing to be done now except to evaluate what occurred and get the reasons therefore.

I think it points out very clearly the fragility of what we are dealing with and why it is that we have to have the knowledge of those oceans.

Well, I wish you good luck. I have other questions that, as I said, will be submitted on behalf of Senator Hollings and Senator Laxalt, other members of the committee. I know all the members of the committee wish you good luck.

Having said that, I will try as a tribute to you, John, as a tribute to you, to have you leave your office with one of the largest budgets that NOAA has ever had. [Laughter.]

Senator WEICKER. Thank you very much.

Dr. BYRNE. Thank you. Well, it has always been a pleasure to discuss NOAA's affairs with you, Senator, and as I said earlier, I think that the budget that we have prepared is a reasonable budget. I think that we can carry out our responsibilities, and the reason I am confident of that is because I have great confidence in the NOAA employees who share with you and with me the concerns that we all have with regard to the oceans and the atmosphere. They recognize the need that presses us with regard to the budget deficit, and that makes it difficult, more difficult for them to do their jobs.

But they do them well, and it has been a pleasure to be associated with the agency and a pleasure to represent them in our discussions with you.

Senator WEICKER. Thank you very much. Good luck to you.

SUBMITTED QUESTIONS

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

Ocean, Coastal, and Marine Resource Programs

Question:

What was the FY 1983 obligation level and carryover for the estuarine sanctuaries program? What is the program level in FY 1984, and do you expect to obligate all the funds in the current fiscal year?

Answer:

The FY 1983 obligation level for the estuarine sanctuaries program was $2,419,300. Unobligated funds amounting to $966,600 were carried over into FY 1984. Total funds available in FY 1984 amount to $3,896,600, which will be used to make approximately 22 grants (for acquisition, operations, and research) to the 15 existing sanctuaries and up to two new sanctuaries to be added in FY 1984. It appears that there will be some carryover of funds from FY 1984, to FY 1985; the amount will primarily depend upon whether new sanctuaries are designated before the end of the fiscal year. Any carryover funds will be obligated early in FY 1985.

Question:

The Congress increased by $2 million the amount available for Saltonstall-Kennedy grants in FY 1984. Pursuant to instructions in Senate Report No. 98-206, has or does NMFS intend to increase proportionately the funds allocated for the Western Pacific region through the Pacific Fisheries Development Foundation?

Answer:

The Federal Register notice of availability of Saltonstall-Kennedy funds and instructions to the public was published on March 5, 1984. Priority considerations for projects in the Western Pacific region are discussed in Part III. C. 1. Projects may be submitted by the Pacific Fisheries Development Foundation and other eligible applicants, as outlined in Part IV. A. Specific funding for projects is based on the merits of the projects. Available funds are not allocated except to the levels of cost sharing described in Part IV. C.

Question:

What is the funding level proposed for bowhead whale research, and how will this be used?

Answer:

In FY 1984, approximately $640,000 is available for bowhead whale research. Major activities to be continued under this program include:

- aerial surveys for recruitment
- analysis and assessments of life history and biological data
- monitor take of bowhead whales
- compile take of whales by Alaskan natives for use by International Whaling Commission

In FY 1985, a reduction of $350,000 is proposed which will probably reduce only the extent of aerial surveys conducted. This will leave base funding of $290,000 to continue necessary activities associated with the bowhead whale research program.

Question:

The Congress provided $2 million for polymetallic sulfides research in FY 1984. How and where are these funds being spent?

Answer:

The objective of NOAA's research program in polymetallic sulfides is to assess the interaction between hydrothermal solutions associated with venting at seafloor spreading centers, and the physical, chemical, biological, and geological characteristics of the environment in which the fluids are active. Principal FY 84 research activities are:

(1) Identification of venting systems

(2) Chemical and physical characterization of the hydrothermal solution of venting systems.

(3) Identification and elucidation of the interactions between hydrothermal fluids and the "ambient" environment.

(4) Identification and elucidation of attributable effects of the hydrothermal fluid/ambient ocean interactions.

During FY 84, the principal program focus is on location and characterization of venting fluids from the Juan de Fuca/Gorda Ridge system in the eastern Pacific Ocean. Oceanographic cruises will be undertaken on NOAA research ships and on the NSF submersible ALVIN.

A breakdown of program activities follows:

I. Scientific Program

(1) Identification of Venting Systems
(2) Characterization of Solutions
(3) Identification of Interactions
(4) Identification of Effects

II. Cooperative Institute - Oregon State Univ.

Question:

A program level of $5.8 million was provided for ocean pollution projects in FY 1984. What is the status of the research projects being funded?

Answer:

A program level of $5,800,000 is required to conduct high priority national marine pollution assessment programs. The program is focused on assessments of ocean waste disposal, municipal and industrial sludge management alternatives and response to EPA sludge management programs. Directed research on the level of pollutants focuses on high national priorities such as the presence of synthetic organics in the marine and estuarine environment, especially the occurrence of those compounds in fish, shellfish and humans. These resources also are used to increase funding of the National Status and Trends Programs--a collection of measurements and assessments of the ambient concentration of toxic compounds in coastal and estuarine areas throughout the Nation. Information gained from these activities is allowing the Federal Government to assess more rigorously the cost-effectiveness of national marine pollution control programs.

Question:

Does the NOAA budget request include funding for Hawaiian monk seal research? If so, at what level?

Answer:

Yes; it is expected that approximately $90,000 to $150,000 will be available in base program funds for Hawaiian monk seal research in FY 1985.

Question:

In FY 1984, NOAA received $400,000 for striped bass research. What research is being performed, and where?

Answer: (CLERK'S NOTE: Report available in Committee files.)

A draft copy of a report describing the results of striped bass research over the past few years is attached. The report provides information about the nature of the striped bass fishery, and other pertinent data.

Question:

In FY 1984, NOAA received $5.7 million above the budget request for fisheries development. What are the elements of this program?

Answer:

The primary elements of the $5.7 million provided in FY 1984 include fishery development research and services, and product quality and safety research. Fisheries development activities are designed to overcome major economic and technical impediments associated with the development of underutilized species and enhance the growth of traditional fisheries. Product quality and safety research activities involve safety, quality, and the identification of impediments to the full utilization of living marine resources.

Question:

Does the budget request include sufficient funds to continue the seafood inspector program as enhanced in the FY 1984 bill?

Answer:

The FY 1985 budget request will allow the seafood inspection program to operate under a full cost recovery system, with the industry paying for costs of having their products inspected. This is consistent with general Administration policy to have users pay the full cost of programs for which they are the direct beneficiaries. The enhanced program for FY 1984 provided a direct subsidy to the industry and training of inspectors which are not required in FY 1985.

Question:

Two GAO reports (CED-79-23, January 9, 1979, and GAO/RCED-83-72, January 7, 1983) discussed the slow progress and problems of regional fishery management councils in developing and implementing fishery management plans. GAO made several recommendations to speed up the process. The Administration is proposing a $4 million decrease for council administration and operations indicating that the funding reduction will not impact the fishery management plans currently in place (NOAA-84). How will the funding reduction impact the plans expected to be developed and implemented in FY 1985 and other council activities?

Answer:

Most major fisheries within the Fishery Conservation Zone are already under management. The implementation of the proposed reduction will not adversely impact Fishery Management Plans (FMPs) or amendments in the "pipeline." We expect that the remaining Council program will continue to provide FMPs and amendments as necessary to fulfill the intent of the Magnuson Act for the highest priority fisheries of the United States.

Question:

NOAA enforces fishery management regulations and measures in cooperation with the Coast Guard. How effective is NOAA in collecting fines from both domestic and foreign fishermen who are caught violating fishery regulations? Are the fines assessed at a high enough rate to deter violations? How is the money collected used?

Answer:

We believe that our current enforcement and surveillance activities serve as an effective part of our overall management efforts. NOAA is effective in collecting the fines. The fines and other penalties are assessed at a high enough rate to deter violations. Some people will continue to test the limits no matter how high the fines are. The fines collected are returned to the U.S. Treasury general fund (i.e., not into a revolving fund for use by NOAA).

Question:

a. The Magnuson Fishery Conservation and Management Act, as amended, requires that foreign countries fishing in the U.S. fishery conservation zone pay fees to cover at least the foreign share of the federal costs of carrying out the provisions of the act. NOAA establishes the fees schedule each year and collects the fees. According to the Administration's budget proposal, the fees could total $50 million in 1985 (NOAA-81). Are the foreign fees high enough to cover all applicable costs to which the United States is entitled?

Answer:

The Secretary of Commerce is required by Section 204(b)(10) of the Magnuson Act to cover the costs applicable to foreign nations. The Act sets a minimum level of costs that must be recovered. The total costs of carrying out the Magnuson Act attributable to foreign nations is determined by the ratio of the foreign catch in the fishery conservation zone to the total catch (U.S. and foreign) in the fishery conservation zone plus the U.S. catch in state territorial waters. This ratio has declined from 30 percent in 1981 to 26 percent in 1983.

After all the costs of the Magnuson Act are determined (e.g., NOAA, Coast Guard, and the State Department) this ratio is used to calculate the foreign share of total costs.

NOAA cannot state definitively whether the United States is recovering all the applicable costs to which it is entitled because of new developments in cost-allocation procedures. Assuming that NOAA, the Coast Guard, etc. have estimated their costs according to proper government accounting methods, then full costs are being recovered using the formula in the Magnuson Act. However, in 1983, the Coast Guard began to allocate the costs of their fisheries enforcement mission on the basis of domestic and foreign activities. Although the estimates are still imprecise, the Coast Guard estimated that for 1983, it spent approximately 62 percent and 38 percent of its time on foreign and domestic enforcement efforts, respectively. This has implications for the foreign fishing fee schedule.

In particular, in 1983, the total Coast Guard cost estimate was approximately $100 million. Under the Magnuson Act, NMFS is obligated to collect at least $26 million for Coast Guard costs. However, if NMFS used the actual cost allocations of the Coast Guard, then we could also justify collecting $62 million (i.e., an additional $36 million above the Manguson Act level of $26 million).

In summary, the Magnuson Act establishes a formula for collecting the total costs applicable to foreign fishing. NMFS and the Coast Guard are exploring the implications of different cost allocation procedures and accounting methods for the 1985 foreign fishing fee schedule.

Question:

b. Do the Coast Guard and NOAA have adequate systems and procedures for determining their total costs under the Magnuson Act and what portion of the costs should be recovered from foreign countries?

Answer:

Yes, the system and procedures are adequate. In 1983, the Assistant Administrator for Fisheries established a special task group to review the procedures for determining the level of foreign fishing fees. The task group indicated that NMFS uses a formal set of guidelines for its managers in determining which program costs are attributable to the Magnuson Act. The report recommended the continued use of the current system of determining costs.

The report task group also reviewed Coast Guard cost determination methods and concluded that "the Coast Guard uses a reasonable, repeatable approach to estimating the costs of the Magnuson Act."

The allocation of costs to foreign nations, as noted in the previous part of the question, is determined by the formula in the Magnuson Act.

Question:

c. Are the procedures, criteria, and costs used in establishing the foreign fishing fees sufficiently documented?

Answer:

In FY 1984, the Department of Commerce asked NMFS to conduct an "internal control review (ICR)" of the foreign fishing fee program. This is being done in compliance with the Federal Manager's Financial Integrity Act. The objectives of an ICR are to examine various government programs for waste, fraud, and mismanagement.

Part of the ICR on foreign fishing fees is to document and prepare a flow chart showing how the program operates. Upon completion of the ICR later this year, NOAA will have detailed documentation on the procedures and criteria for determining costs.

Question:

d. Has NOAA studied whether the fees should be increased (as some authorities have suggested) to recover an "economic rent" up to the fair market value of the fishing opportunity afforded the foreign countries?

Answer:

NOAA has not actively studied whether fees should be increased to recover an economic rent. Unless information becomes available on the cost of foreign fishing operations, it will be difficult to determine whether or not economic rent is being collected or how much can be collected. A recent University of Rhode Island study, which made certain assumptions about foreign fishing costs, estimated that foreign willingness to pay for access to the fishery conservation zone may be in excess of $100 million.

NOAA plans to analyze the impacts of significantly raising the fees in the 1985 fee schedule as a result of new cost allocation procedures. This will indirectly address the issue of economic rent.

Question:

Foreign fishing fees collected have been placed in the Fisheries Loan Fund. The existing authorization for this Fund will expire at the end of FY 1984. According to the budget submission, the Administration will propose legislation to revise the Magnuson Act to allow NOAA and the Coast Guard to use unappropriated receipts in the Fisheries Loan Fund to offset their costs to implement the Magnuson Act. The proposal states that, beginning in FY 1985, foreign fishing fees will be collected in a special receipt account in the Treasury and that each year the estimated total available for appropriation will be divided equally and transferred to NOAA and the Coast

Guard to offset their direct appropriation requirements (NOAA-4 and 9).

Question:

Should the funds from the foreign fishing fees be divided equally, or should the allocation to NOAA and the Coast Guard be based on their proportional costs to administer the Magnuson Act?

Answer:

If the monies collected from foreign fishing fees are used to offset NOAA and Coast Guard appropriations, NOAA believes the funds should be divided equally.

The Coast Guard does not get specific appropriations to conduct its fisheries mission. Moreover, the Coast Guard has the ability to vary its expenditures on Magnuson Act related activities. The current Coast Guard expenditure on fisheries enforcement exceeds NOAA's Magnuson Act expenditures. Thus, if the monies are allocated on the basis of proportional costs, NOAA will usually receive much less than 50 percent.

NOAA believes that fishery research and management operations are just as important as enforcement to the overall goal of maintaining and improving the health of the nation's fisheries. Without any direct way to control how much money the Coast Guard spends on its enforcement efforts, we recommend that the revenues from the foreign fishing fees be divided equally.

Question:

The Administration is proposing to terminate NOAA's funding for the Columbia River salmon hatchery operations which would result in a budget reduction of $9.9 million (NOAA-84). According to the budget submission, draft legislation will be proposed to transfer the costs of hatchery operations and maintenance to the Bonneville Power Administration so that the costs can be included in the electric rates. What effect would the termination of federal assistance have on Oregon's and Washington's ability to continue these hatchery operations if the proposed legislation is not enacted?

Answer:

If the proposed legislation is not enacted, both Oregon and Washington will have to reexamine their current spending priorities to determine if hatchery operations and maintenance can be funded within their current or proposed state budgets. We anticipate that the proposal to transfer the costs of hatchery operations that was introduced in the House on March 7, 1984 (H.R. 5052) will be passed and avoid any funding problems.

We support the enactment of the proposed legislation to ensure a smooth transition and no loss of hatchery production.

Question:

The Administration is proposing to deactivate the eight NOAA vessels dedicated to fisheries research and stock assessment surveys (NOAA-141). According to the FY 1985 budget submission, NOAA is proposing to provide the necessary ship time for fisheries research primarily through chartering of commercial vessels at a substantial cost savings. How reasonable is the estimated cost savings that is expected to occur from chartering, particularly in light of the statement on page 141 that indicates that NOAA's fisheries vessels may continue to be operated if this proves to be more cost-effective than outside chartering?

Answer:

We believe that the estimated cost savings are reasonable. It is important to remember that the charters are not proposed to substitute one for one for NOAA vessels. The budget proposal reflects an overall reduction in requirements for days at sea since some lower priority surveys will be eliminated.

In addition to a lower days at sea requirement, the proposal maintains our managerial flexibility and recognizes regional differences by allowing the use of charters when they are available and if they are more cost-effective. Charters are more available in some regions like the Pacific Northwest than in others.

Although a complete comparative cost analysis has not been completed, we plan to make a detailed cost analysis part of the contracting process. In a recent A-76 study only on the vessel CHAPMAN, we found that its functions, costing $1.76 million including overhead, could be replaced with a charter costing $1 million. The quality and quantity of services will not suffer. In many cases, commercial vessels may be superior "research platforms" since they are rigged for successful commercial operation in a fishery.

Question:

There is no reduction proposed for the size of the NOAA Corps (NOAA-146). Since the NOAA Corps largely exists to provide the officer contingent on board NOAA ships, how does NOAA justify and intend to utilize the 360 officer work years estimated for FY 1985 if NOAA ships are deactivitated?

Answer:

Of the 10 ships proposed for deactivation, only 5 are operated with NOAA Corps officers. Deactivation of the entire group would affect a total of 23 officers. Of the 23 officers affected, 17 "junior officers" would be reassigned to other fleet units, bringing the remaining fleet to the optimal staffing level. The 6 senior officers, 5 of whom are commanding officers, would have to be considered individually but would likely not be reassigned to other fleet units immediately.

Question:

Do the FY 1985 budgets for NASA and the Department of Defense provide partial funding for the Space Environmental Lab? What services or reimbursements do either of these agencies provide to NOAA at SEL?

Answer:

(a) No. The FY 85 budgets for NASA and the Department of Defense do not provide partial funding for NOAA's Space Environmental Laboratory, although the budgets of both DOD and NASA contain funding for their share of the national program for space environment services and research.

(b) The DOD provides NOAA/SEL, at no cost to NOAA with:

- Data from DOD solar observatories located in Australia, Hawaii, and New Mexico over DOD global communications lines.
- The above data comprise about 80% of the data used by SEL/NOAA in making solar forecasts.

Additionally, at no cost to NOAA, the DOD provides NOAA with:

- Data from five DOD geomagnetic observatories
- Data from 21 DOD ionospheric observing systems
- Energetic particles data and auroral images from DOD DMSP satellites
- Four DOD personnel stationed at NOAA/SEL to assist in SESC operations
- Two DOD personnel to assist in the operation of the NOAA High Latitude Monitoring Station at Anchorage, Alaska

Question:

In 1983 and 1984, $250,000 and $300,000, respectively, were provided for Chesapeake Bay research. How and where are these funds being expended?

Answer:

The $300,000 appropriated in FY 1984, as well as the $250,000 appropriated in FY 1983, are being used to assist local jurisdictions in establishing pollution monitoring programs for the Chesapeake Bay area. This assistance was requested by local jurisdictions on a short-term basis. Since the programs are now established, and since the pollution problems in the Chesapeake Bay are addressed in the President's proposal to provide the Environmental Protection Agency with a FY 1985 budget increase of $40,000,000 for efforts necessary to clean up the Bay, these funds are no longer necessary.

Question:

In 1984, the Congress provided $1 million for GARP and $1.2 million for El Nino research. How and where are these funds being expended?

Answer:

The $1,200,000 provided in the FY 1984 budget is being used to build the meteorological and oceanographic monitoring network in the tropical Pacific for observation of the development and progress of the next El Nino event. These observing stations will contribute substantially to gathering the data required for this future research.

In FY 1984 the $1,000,000 is GARP funds being used, as mandated by Congress in the FY 1984 Appropriations Act, for climate-related research associated with the OACIS/TOGA Project.

Question:

In 1984, $300,000 was restored for circulatory studies. How are the funds being used?

Answer:

Starting in March 1984, the National Ocean Service (NOS) began a 15 month survey of circulation patterns in the Delaware River and Delaware Bay. The NOAA Ship FERREL will deploy measuring systems to collect circulation data for numerical model testing and certification. The information from this project has been requested by Federal and local users (U.S. Geological Survey, U.S. Army Corps of Engineers, and the States of New Jersey, Delaware and Pennsylvania) to improve circulation information for safety, health, and economic reasons.

The Circulation Program of NOS is an ongoing program which provides prediction products and services for currents in estuaries. Hence, as long as there is a need to add or improve products and services in various geographical areas, the program will continue. NOS is in the process of reorienting the program into greater use of circulation predictive numerical models and greater use of contractors for field observations.

Question:

What is the budget request for PROFS in 1985? How does this compare with 1983 and 1984? How will these funds be used? Has a plan been developed to begin phasing in PROFS on an operational basis? When will this occur?

Answer:

(a and b) The FY 83-85 funding history for PROFS is:

FY 1983	-	$ 3,674,000
FY 1984	-	$ 2,572,000
FY 1985	-	$ 2,072,000

(c) The funds will be used to test and evaluate technologies and forecast methods to determine which could have the greatest impact on weather and hydrological forecast improvements. The funds will also be used to develop specifications for implementing these improved systems in the NWS field forecast offices. Systems being tested include Doppler radar, Profiler vertical soundings, AFOS, satellite data sets, display techniques, and improved mesoscale models. The objective of the PROFS program is to improve short-range severe weather warning, alerts, and forecasts by introducing new technologies into the operational weather service system.

(d) Yes. The National Weather Service has developed a preliminary plan to phase selected PROFS-developed products into their operations. The NWS Restructuring and Modernization Task Force is reviewing this plan to incorporate it into overall field office technology needs for the future.

(e) The schedule for phasing in any needed PROFS-specified technology improvements is being developed now; we will provide it to Congress once it is final.

Question:

What funds are budgeted in FY 1984 and FY 1985 for development of the atmospheric profiler at ERL?

Answer:

FY 84 funds available for Profiler are $1194K. It is estimated that $1000K will be available in FY 85.

Question:

The Congress provided an additional $800,000 in 1984 for acid rain research. What is NOAA's total budget for this research in 1984 and 1985, and how are these funds being used?

Answer:

NOAA's total acid rain budget is $3.1 million and $2.3 million in FY 1984 and 1985. NOAA's acid rain research effort can be broken down as follows:

(1) Natural Sources

- identify and quantify sources of concern to the U.S.

(2) Atmospheric Processes

- long-range trajectory studies
- modeling of global-scale transport of acidic materials
- aerosol and cloud chemistry measurements
- acid-forming chemical transformations
- provide a more intensive level of chemical transformation modeling and measurements, a responsibility assigned to NOAA by the National Acid Precipitation Assessment Plan, developed by the Task Force.

(3) Deposition Monitoring

- global/national-trend measurements
- establish initial atmospheric research sites
- develop dry-deposition measurement methods
- conduct dry-deposition research and monitoring

The Interagency Task Force on Acid Precipitation has reviewed NOAA's program requirements and identified $2.3M as an appropriate level of effort for NOAA's participation in the national acid rain research program in FY 1985. The government-wide budget for this research program in FY 1985 is approximately $55 million.

Question:

Does the $470,000 provided for climate data interpretation complete the planned period of analysis for this program?

Answer:

The $470,000 was first made available in FY 1982. Funds available for three years have enabled the National Climatic Data Center to merge the basic data sets for airways, cooperative and marine data into the data archive and to purchase a quality assurance graphics subsystem for improved quality control. Having completed these highest-priority tasks, we will continue data interpretation and analysis at a reduced level.

Question:

In 1984, the Congress accepted a portion of the proposed reduction in OTES. What was cut, and what remains?

Answer:

In FY 1984, new technology development and engineering support for the following projects continue at a reduced level: heat flux and ocean measurements for climate observations; pollution monitoring, monitoring of marine organisms; development of a bottom-mounted remote acoustic Doppler system for measuring water currents; CODAR for near shore wave spectra measurements. Work on the bathymetric swath survey system continues at the FY 1983 level.

Question:

What were the permanent position and work-year levels for Executive Administration in 1983? What will they be in 1984 and 1985, based on the accepted and prcposed reductions in each case?

Answer:

Executive Direction and Administration

	FY 1983 Actual	FY 1984 Estimate	FY 1985 Estimate
Permanent Positions...	1,090	1,070	787
Total FTEs............	1,046	1,042	807

Question:

NOAA estimates a savings of $6.1 million associated with A-76 studies in 1984. How was this figure arrived at, when few of the studies were complete at the time of the budget submission? Based on further study, does NOAA have a revised number?

Answer:

The estimated savings of $6.1 million from A-76 studies represents the savings which NOAA will begin to accrue during FY 1985 based on studies conducted during FY 1983/84. The figure is based on a formula developed from previous government-wide A-76 experiences. The estimated savings are continually being monitored and compared to the findings in each step of the A-76 process for all studies. NOAA's current assessment is that the original estimate of $6.1 million in savings for FY 1985 is reasonable and will be met by the agency.

The following describes the formula that was applied to the list of A-76 studies to be completed in FY 1984 which include 2,137 full-time equivalent positions (FTE):

The formula assumes that there is a 50/50 chance on any given study that the function will remain in-house;

- If an activity remains in-house, management efficiency savings are estimated to accrue, saving 23 percent of the personnel involved at $25,000 each.
- If the activity is contracted out, savings will accrue on 95 percent of the personnel at $6,000 each.
- The savings are phased in over two years, half in FY 1985 and the remainder in FY 1986.

Based on the above formula the calculations below show how the savings were determined:

2,137 FTE
583 FTE (specific assuming management savings only)
1,554/2 = 777 (50/50 in-house/contract

in-house	777	x	.23	=	179	x	$25K	=	$ 4,475K
contract	777	x	.95	=	738	x	6K	=	4,428K
specific cases	583	x	.23	=	334	x	25K	=	3,350K
Total	2,137								$12,253K

Half of the savings accrue in FY 1985		$ 6,127,000
Remaining savings accrue in FY 1986		6,126,000
	Total	$12,253,000

Question:

Please list for the record the costs for each A-76 study contracted to the private sector, and the internal costs associated with each study, whether done in-house or by a contractor. Also, estimate the costs associated with A-76 studies planned later in FY 1984 and FY 1985. In describing the in-house costs, provide an explanation of the program reductions associated with the "reprogramming" of resources.

Answer:

The two tables attached as Attachments A and B provide the information requested. Table one provides a complete inventory list of 36 activities under NOAA's A-76 program. Column two provides the consultant cost for each study underway and column 5 provides future consultant costs. Table two provides the internal costs to date and future internal costs for A-76 studies. All costs for A-76 studies are absorbed within the program areas in which studies are being conducted and do not result in any program reductions but ,instead, are identifying cost savings through management efficiencies within the programs. This is not considered to be reprogramming since the funds are being spent on the programs for which they were appropriated.

Question:

Describe the use of current and planned Class VI supercomputers at NOAA.

Answer:

The FY 1985 budget provides funding for a joint NBS/NOAA Class IV computing facility at Gaithersburg, Maryland to serve the scientific sector's processing needs of ERL labs in Miami, Ann Arbor, Seattle, Norman and Boulder. This will supplement the Class VI processing capabilities currently available and utilized by NMC (1 installed, 1 planned) and the Geophysical Fluid Dynamics Lab (2). The following paragraphs describe the uses of these facilities.

National Meteorological Center

Current and planned Class VI computers in Suitland, Maryland, directly support the forecast operations of the National Weather Service. A single super-computer, installed in 1983, is used to run the principal forecast models of the National Meteorological Center (NMC). During the next 6 to 9 months, NMC plans to introduce on this computer new high-resolution regional and global forecast systems designed to improve the accurancy of 1 to 10-day weather forecasts over North America and of wind forecasts for domestic and international aviation. The 1 to 2-day forecasts produced by the higher resolution regional model will in particular provide noticeable improvements in forecasts of precipitation amounts and severe weather. Supercomputers are used by NMC both for operational forecasts and for developing and testing new forecast systems. A second Class VI computer to be installed in 1985/86 will provide the additional computer power required to develop new mesoscale and global forecast systems for use in the late 1980's and will provide operational backup in case of single supercomputer failure.

Geophysical Fluid Dynamics Laboratory

The GFDL Cyber system provides the computational power and storage resources required for that laboratory to expand the scientific understanding of oceanic and atmospheric fluid dynamical processes. The resulting improvements in physical modeling are essential to improved weather and climate forecasting.

NBS/NOAA--Gaithersburg

The Class VI system to be installed at the National Bureau of Standards will meet the large scale computing needs of ERL.

A large part of the current and projected use of the Class VI supercomputers in ERL is concentrated in the area of modelling physical phenomena. Applications would include photochemical-dynamic global atmospheric modelling to understand the chemical composition and transport properties of the atmosphere; mesoscale modelling to be used in hurricane predicition research, for studying the meteorological environment of severe weather and the dynamics of convective systems; water circulation models to meet the needs of Great Lakes and coastal oceanography research; dynamic wave forecasting models; and operational ice prediction models.

Question:

NACOA's 1982 report, "The Future of the Nation's Weather Services" states, "To provide NWS with advanced equipment, this means an annual increase in Federal weather-related expenditures on the order of about 7 percent over the next decade." Does NOAA agree with this estimate, and does the budget request reflect this?

Answer:

We cannot substantiate this estimate at this point, as we are still working to determine what mix of new equipment will be necessary. Moreover, the exact amount required will vary from year to year as programs phase through development, production, and deployment. The FY 85 budget request provides for increased funding for Phase III of the NOAA Central Computer Facility Upgrade. The FY 1985 funding level for NEXRAD will enable NWS to complete the Validation Phase by the end of FY 1986 as scheduled. The Automation of Surface Observations (ASOS) program is also adequately funded for FY 85.

Question:

The 1982 NACOA report also concludes, ". . . obsolete radars will be replaced (by NEXRAD), but there will be no displacement of other conventional observations or a reduction in required manpower." Does NOAA agree with this conclusion? If not, how and where, specifically, could personnel be reduced?

Answer:

NOAA does not see a decrease in the need for conventional observations in the sense that meteorological and hydrologic surface observations, and upper air observations, will continue to be needed indefinitely. However, it is expected that there will be evolutionary changes in the way these observations are made. Surface observations will become increasingly automated and whatever human augmentation is needed can be performed by a non-NWS person with only limited training. Upper air observations will gradually be supplemented by automated profiler and satellite sounder systems; and, ultimately, the manned upper air sound system will be used only to provide bench mark quality control data.

The studies currently underway indicate that the combination of these automated systems and a restructured field organization can lead to reductions in NWS field personnel in the 1990's.

Question:

What have been the actual and proposed staffing levels for professional meteorologists and hydrologists from fiscal year 1979 through 1985?

Answer:

The actual NWS staffing levels for meteorologists and hydrologists for fiscal years 1979 through 1984, and proposed fiscal year 1985 levels are as follows:

	ACTUAL						Proposed
	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	1985
Meteorologist	1,369	1,362	1,355	1,379	1,358	1,380*	1,221
Hydrologist	143	145	144	157	155	158	148

*Includes 48 positions associated with the transfer of Satellite Field Service Stations

Question:

Rain and water gauges operated by the Corps of Engineers and the U.S. Geological Survey provide information to NOAA. Has the number of such gauges declined in the past five years, and if so, by how much?

Answer:

NOAA depends on the USGS and Corps for the vast majority of water level gauges to support its nationwide river and flood forecast service to over 3000 communities. NOAA operates the rain gauge network that serves its needs and those of many other agencies. Over the past five years there has been a reduction of about 100 water level stations operated by the USGS and about 25 water level stations operated by the Corps. There has been a decline in state financial support for the water level gauges operated by the USGS. NOAA's network of rainfall stations has been essentially stable over the past five years. However, there was a reduction of about 1,000 NOAA climatological stations used primarily for water supply forecasting between the years 1977 to 1979.

Question:

In FY 1984, the Congress restored $340,000 for NWS hydrological R&D. Specifically, what research is being performed with these funds? (Identify the funding levels for each research project.)

Answer:

The $340K restored by Congress in FY 1984 provides funding to support the following NWS meteorological and hydrological research and development activities:

$60,000	Operation of the Snow Research Lab in Danville, Vt. devoted to hydrological data collection, analysis, and development of snowmelt runoff forecasting techniques.
$90,000	Production of joint NOAA/USGS flood reports which include in-depth hydro-meteorological analyses of major flood disasters.

$100,000	Contractor software support for the NWS River Forecast System model development and implementation, and development of Extended Streamflow Prediction (ESP) techniques for water resources management.
$90,000	Development of forecast products for solar radiation and energy demand, utilization, and production from solar and wind sources.

Question:

Does the budget for the NWS include operational funds in the base for FY 1985 to operate the new Western Kentucky weather radar being constructed this year? Provide a detailed breakdown of the necessary staffing and funding levels.

Answer:

Staffing costs and operational funds (7 FTE/$385,000) for the Western Kentuckty radar will be provided out of base funds in FY 1985.

Question:

Has NOAA placed two data platforms along the Souris River in Canada, pursuant to instructions in Senate Report No. 98-206?

Answer:

NOAA, through the cooperation of the Inland Waters Directorate of Canada, has placed the two satellite data platforms along the Souris River as instructed by the Senate. The platforms began operational reporting on March 15, 1984.

Satellite and Environmental Data and Information Services

Question:

The cost of operations of the LANDSAT ground systems is estimated to increase by $5.4 million in FY 1985 as a result of increased EROS Data Center support costs and increases NASA support costs for the Tracking and Data Relay Satellite System and operations. Why have these costs increased?

Answer:

The direct funding of LANDSAT operations has increased due to the acquisition and processing of Thematic Mapper (TM) data and some reduction in the level of other agency reimbursable work. During FY 1985, NOAA will assume responsibility for the operation of the TM. The increase in funds represents the additional cost to NOAA to bring the TM data back through TDRS, to process that data, and to have the EROS Data Center archive and reproduce that data for sale.

Question:

To what extent does the Department of Defense depend on data from the two polar orbiter weather satellites? Does NOAA use data from DOD weather satellites?

Answer:

The Defense Meteorological Satellite Program (DMSP) has been designed to provide, as their first priority output, high quality imagery used for tactical support of strategic missions. The NOAA satellites are planned primarily to obtain quantitative environmental data for numerical analysis purposes. Each satellite provides data which can be used by the other agency, though the quality is not equivalent to that obtained from its own satellites.

The defense and civil meteorological satellite programs have been mutually supportive. Not only is there a free exchange of data and products, there also is the critical support provided by mutual backup in the event of system failures. The DoD relies on the NOAA Polar satellite system to backup and supplement its own DMSP spacecraft data set.

NOAA does and will continue to utilize data from the DMSP Satellites. With the initiation of a shared data processing agreement, NOAA will obtain image products from the U.S.A.F. and ocean analyses from the U.S.N. These products will rely on inputs from DoD satellites, NOAA satellites and "conventional" sources.

Question:

The Department of Agriculture will not reimburse NOAA for LANDSAT products in 1985. What impact will this have on LANDSAT operations?

Answer:

The direct funding requested in the FY 1985 budget submission assumes a reduction in the level of reimbursements provided by the Department of Agriculture for Landsat products. This level of funding, and increased sales of Thematic mapper products, will offset the reduction.

Question:

You are proposing $4 million increase to upgrade the instrumentation on the next generation of the GOES satellite to improve short-term weather forecast warnings:

a. How much of an improvement will this enhancement generate?

Answer:

This augmentation will provide:

1) The capability to provide images in three additional wavelength regions and to improve the resolution in the infrared channels from current 8km to 4km. This will give higher resolution of water vapor distribution in the upper troposphere, better detection and height-determination of clouds, and more accurate measures of water vapor transmissivity in the atmosphere. This will improve the quantitative forecasts of precipitation.

2) The capability to provide imagery and atmospheric temperature soundings in a parallel, essentially simultaneous mode. Operational capability (the present system provides water vapor images only when the normal imaging operation is interrupted) will expand the range of observation of water vapor distributions. This will improve NWS's capability to follow the type of mesoscale development known to lead to severe storms, flash floods, and tornados.

Question:

b. If you stayed with the same technology as today, would you save this $4 million?

Answer:

If we were to retain our current satellite capability, merely redesigning for shuttle compatibility, the funds requested for the augmented capability would not be required.

Question:

c. Is this the only year for which you are requesting funding for this instrumentation improvement?

Answer:

No. Additional funding for this augmentation is spread through the period where satellite design, development, and testing is being accomplished. The total request for this effort, which includes instruments on three satellites, is:

(dollars in thousands)

	FY 86	FY 87	FY 88	FY 89	To Complete
Spacecraft system	$9,480	$10,390	$11,410	$66,350	$26,500
Ground system	300	1,000	1,500	1,500	1,500
Total	$9,780	$11,390	$12,910	$7,850	$28,000

Question:

d. When will this improvement actually be operational, that is, in what year will the satellite be launched that would contain this instrumentation?

Answer:

This improvement will be included on the GOES-NEXT satellite series. We expect the first satellite to be launched in 1990.

Question:

You are requesting $15,950,000 for various increases related to the annual costs to maintain the current operational level of Geostationary satellites and all weather satellite ground systems:

a. Break out for the record what all these increases are related to.

Answer:

The increase of $15,950,000 is the net of an increase of $17,444,000 for the geostationary satellite system plus decreases in both polar (-$815,000) and geostationary (-$679,000) ground systems. The following is a breakout of these increases and decreases:

	FY 84	FY 85	CHANGE
GOES D, E & F Spacecraft	4,100	...	-4,100
GOES G & H Spacecraft	37,698	20,701	-16,997
GOES I, J & K Spacecraft	7,200	26,50	+19,300
GOES G & H Launching	18,759	38,000	+19,241
GOES Satellite System Sub-Total	67,757	85,201	+17,444
Polar Ground Systems	2,915	2,100	-815
Geostationary Ground Systems	4,471	3,792	-679
Ground System Sub-Total	7,386	5,892	-1,494
Total	75,143	91,093	+15,950

Question:

b. Are these fixed costs?

Answer:

The table above represents requirements to fund annual accrued costs for multi-year spacecraft procurements and ground system modifications. The GOES G & H spacecraft are under contract. The GOES I, J & K contract is planned for award in late 1984.

Question:

c. How many satellites does this involve and are you committed to the purchase of those satellites?

Answer:

The table above includes funding for FY 1985 accrued cost associated with procurement of five geostationary satellites; two are under contract and a Request for Proposal is being prepared for the other three. All five satellites are necessary to maintain a two GOES operational system.

Question:

d. Where are the ground station systems that will be involved in this effort?

Answer:

The ground systems are located at Suitland, Maryland, and at the Wallops Island, Virginia, Command and Data Acquistion Station.

Question:

e. How many years of funding are involved in these expenses or is this the total you expect to incur over the next two to three years?

Answer:

A typical spacecraft procurement requires a contract that extends over 5 to 10 years, depending on the number of satellites and delivery requirements. The FY 1985 request is the amount required to fund the costs that will accrue during that year.

Question:

Has all the funding appropriated by Congress for a second polar orbiter been spent to maintain a 2 polar system?

Answer:

All funding appropriated by Congress has been used to continue the procurements of polar orbiting spacecraft. Most of the funding provided to maintain a two polar system was used to include the NOAA J spacecraft with the NOAA H & I contract. This spacecraft will be utilized whether we are in a single or dual spacecraft mode. An additional $4,000,000 is being applied toward the development of the next generation of polar satellites.

Question:

Is any of the money Congress appropriated for a two-polar system shown as an out-year saving in the FY 1985 budget?

Answer:

The additional $4 million provided in FY 1984 is being used to start follow-on spacecraft procurements for the NOAA H, I, and J program. A corresponding reduction of costs in FY 1988 is therefore possible.

Question:

The budget justification assumes an additional cost of $47 million to maintain a two-polar orbiter system. Does this figure include $5 million for the Advanced Microwave Sounding Unit (AMSU) which will be necessary if NOAA is to maintain a two-polar orbiter system?

Answer:

No. An additional $5 million is required in FY 1985 to start development of AMSU. Under a two polar orbiting system, AMSU development must begin in FY 1985 to assure availability in time to meet the planning launchdate of the first NOAA Next spacecraft (NOAA K required in FY 1989).

The $47 million covers the first full year of procurement for six shuttle launchable spacecraft, but does not provide for the development of AMSU.

Table One (A)

	Study #	Activity	① Phases	1983 & 1984 Action to Date (2/21/84) ② Consultant Costs	③ Est. Mgt. Savings	1984 & 1985 Future Action ④ Phases	⑤ Consultant Costs	⑥ Est. Mgt. Savings	Totals ⑦ Cons. Costs	⑧ Est. Mgt. Savings	⑨ FTE	⑩ Budget	⑪ Subactivity/Line Item
1.	A001	NOAA Log.Sply.Ctr.	I,II,III	$53K(83)	$200K Act.	N/A	$0	$0	$53K	$200K	30	$950K	Exec.Dir. & Admin/Admin.
2.	A004	MASC Library Svcs.	N/A	0	0	I,II,III	$20K(84)	$140K	$20K	$140K	18	$739K	Exec.Dir. & Admin/Admin.
3.	A005	MASC Sply.Svcs.	N/A	0	0	I,II,III	$40K(84)	$142K	$40K	$142K	34	$710K	Exec.Dir. & Admin/Admin.
4.	E002	NOAA Library	I,II,III	$66K(83)	$300K Act.	N/A	$0	$0	$66K	$300K	28	$1,800K	Data & Info.Svcs/Assess & Info Svcs
5.	E003	NODC ACP Ops.	I,II,III	$62K(83)	$250K Act.	N/A	$0	$0	$62K	$250K	22	$1,000K	Data & Info.Svcs/Ocean Data Svcs.
6.	N008	Geod.Resources Mgt.	N/A	$0	$0	I,II,III	$50K(84)	$1550K	$50K	$1,550K	244	$10,300K	Map,Chart,&Geod.Prog/Geod.Ref.Syst.
7.	R001	GFDL Comp. Ops.	N/A	$0	$0	I,II,III	$75K(84)	$80K	$75K	$80K	16	$400K	Atmos.&Hydro Research/Meteor.Resrc
8.	W001	NWS Engineering Act.	I	$225K(84)	$0	II,III	$75K(84)	$3000K	$300K	$3,000K	214	$14,521K	Pub. Warn.& Fore.Svcs/Maint.&Repair
9.	W004	Test & Eval. Div.	I,II	$71K(84)	$0	III	$25K(84)	$320K	$96K	$320K	39	$1,627K	Pub. Warn.& Fore.Svcs/Observations
10.	W005	Weather Chart Repr.	I,II	$0	$50K Act.	III	$0	$0	$0	$50K	13	$535K	Pub. Warn.& Fore.Svcs/Met.Pred.Ctrs
11.	W007	Comm. Ops. Br.	I,II	$53K(83)	$130K Act.	III	$20K(84)	$0	$73K	$130K	49	$1,300K	Pub. Warn.& Fore.Svcs/Communication
12.	W008	Overseas Log Ops	I	$10K(83)	$20K Est.	II,III	$10K(84)	$0	$20K	$20K	6	$140K	Pub.Warn & Fore.Svcs/Observations
13.	W009	Wash. Area Techs.	N/A	$0	$0	I,II,III	$15K(84)	$30K	$15K	$30K	7	$190K	Pub.Warn & Fore.Svcs/Maint.& Repair
14.	W010	Dallas Airport Obs.	N/A	$0	$0	I,II,III	$30K(84)	$50K	$30K	$50K	9	$360K	Pub.Warn & Fore.Svcs/Aviate Weather
15.	W011	NWS Alaska Acts.	N/A	$0	$0	I,II,III	$100K(84)	$340K	$100K	$340K	35	$1,719K	Pub. Warn.& Fore.Svcs/Maint.&Repair
16.	W013	NWS Hawaii Acts.	N/A	$0	$0	I,II,III	$60K(84)	$140K	$60K	$140K	21	$721K	Pub. Warn.& Fore.Svcs/Maint.&Repair
17.	W015	NY Airport Obs.	N/A	$0	$0	I,II,III	$70K(84)	$140K	$70K	$140K	19	$497K	Pub. Warn.& Fore.Svcs/Aviat. Weathe
18.	W017	LA Airport Obs.	N/A	$0	$0	I,II,III	$60K(84)	$100K	$60K	$100K	14	$400K	Pub. Warn.& Fore.Svcs/Aviat. Weathe
19.	A002	Metro Spt. Svcs.	I,II,III	$71K(83)	$830K Act.	N/A	$0	$0	$71K	$830K	73	$2,500K	Exec.Dir. & Admin/Admin.
20.	E001	NCDC ADP Ops.	I,II,III	$49K(83)	$650K Act.	N/A	$0	$0	$49K	$650K	155	$4,000K	Data & Info.Svcs/Climate Data Svcs.
21.	F001	NW&Alaska Fish.Act.	N/A	$0	$0	I,II,III	$130K(84)	$500K	$130K	$500K	55	$2,484K	Info.Col.& Anal/Info. Anal & Dissem
22.	F002	SE Fish. Ctr. Act.	N/A	$0	$0	I,II,III	$80K(84)	$100K	$80K	$100K	25	$700K	Info.Col.& Anal/Info. Anal & Dissem
23.	F003	NE Fish. Ctr. Act.	N/A	$0	$0	I,II,III	$80K(84)	$110K	$80K	$110K	23	$520K	Info.Col.& Anal/Info. Anal & Dissem
24.	F004	SW Fish. Ctr. Act.	I,II,III	$86K(84)	$0	N/A	$0	$200K	$86K	$200K	25	$1,000K	Info.Col.& Anal/Info. Anal & Dissem
25.	N004	Aero Chart Br.	I	$140K(83)	$1,100K Act.	II,III	$50K(84)	$0	$190K	$1,100K	200	$9,100K	Map,Chart,Geod.Prog/Aero.Chart Svcs
26.	N007	Marine Chart Br.	I	$99K(83)	$1,300K Act.	II,III	$50K(84)	$0	$149K	$1,300K	131	$4,650K	Map,Chart,&Geod.Prog/Naut.Chart.Svc
27.	N006	Tides&Water Levels	I	$122K(84)	$650K Est.	II,III	$50K(84)	$0	$172K	$650K	74	$3,700K	Ocean Svcs/Ocean & GL Assess.& Svcs.
28.	N011	Circ. Surveys Sect.	I	$50K(84)	$300K Act.	II,III	$25K(84)	$0	$75K	$300K	16	$800K	Ocean Svcs/Ocean & GL Assess. & Svcs
29.	N010	Atlantic Marine Ctr.	I	$228K(83)	$5,300K Act.	II,III	$75K(84)	$0	$303K	$5,300K	518	$22,000K	Marine Svcs/Ship Maint. & Spt.Svcs.
30.	A003	WASC Sply. Act.	N/A	$0	$0	I,II,III	$20K(84)	$100K	$20K	$100K	7	$500K	Exec. Dir. & Admin/Admin
31.	E004	NGDC ACP Ops.	I	$0	$45K Est.	II,III	$10K(84)	$0	$10K	$45K	7	$300K	Data & Info. Svcs/Geophys.Data Svcs
32.	N003	Imagery Proc. Lab	I,II	$0	$75K Est.	III	$0	$0	$0K	$75K	7	$500K	Map,Chart,&Geod.Prog/Coastal Map Serv
33.	ATS	FOB-4 Comp. Ops.	N/A	$0	$0	I,II,III	$150K(85)	$1300K	$150K	$1,300K	44	$9,400K	Exec. Dir. & Admin/Admin
34.	NMR	NMC Comp. Ops.	N/A	$0	$0	I,II,III	$100K(85)	$600K	$100K	$600K	22	$4,000K	Pub. Warn.& Fore.Svcs/Met.Predic.Ct
35.	N012	Pacific Marine Ctr.	N/A	$0	$0	I,II,III	$200K(84)	$6000K	$200K	$6,000K	533	$25,000K	Marine Svcs/Ship Maint.& Spt. Svcs.
36.	W020	O'Hare Airport Obs.	N/A	$0	$0	I,II,III	$30K(84)	$50K	$30K	$50K	10	$344K	Pub.Warn & Fore.Svcs/Aviate Weather
				$1,385K	$11,200K		$1700K	$15000K	$3,085K	$26,200K	2,746	$129,699K	

Table Two (

OMB Circular A-76 Studies
3/15/84

Estimated Internal Study Costs:

Study #	Activity	Costs to Date	Future Est. Costs	Est. Total In-House Costs
A001	NOAA Logistics Supply Center	40K	0	40
A004	MASC Library Services	0	15K	15
A005	MASC Supply Services	0	20K	20
E002	NOAA Library	30K	20K	50
E003	NODC ADP Operations	30K	20K	50
N008	Geodetic Resources Management	10K	90K	100
R001	GFDL Computer Operations	0	40K	40
W001	NWS Engineering Activity	0	100K	100
W004	Test & Evaluation Division	20K	20K	40
W005	Weather Chart Reproduciton	15K	10K	25
W007	Communication Operations Br.	20K	20K	40
W008	Overseas Logistics Operations	5K	8K	13
W009	Wash. Area Techs.	0	5K	5
W018	Dulles Airport Observation	0	10K	10
W011	NWS Alaska Activities	0	40K	40
W013	NWS Hawaii Activities	5K	15K	20
W015	NY Airport Observation	0	20K	20
W017	LA Airport Observation	0	20K	20
A002	Metro Support Services	30K	15K	45
E001	NCDC ADP Operations	60K	15K	75
F001	NW & Alaska Fish. Activities	0	40K	40
F002	SE Fish. Center Activitiies	0	40K	40
F003	NE Fish. Center Activities	0	40K	40
F004	SW Fish. Center Activitiies	10K	30K	40
N004	Aeronautical Chart Br.	70K	40K	110
N007	Marine Chart Br.	200K	40K	240
N006	Tides & Water Levels	60K	30K	90
N011	Circ. Surveys Sect.	25K	15K	40
N010	Atlantic Marine Center	125K	60K	185
A003	WASC Supply Activity	0	15K	15
E004	NGDC ACP Operations	5K	10K	15
N003	Imagery Processing Lab	10K	5K	15
ATS	FOB-4 Computer Operations	0	100K	100
NWS	NMC Computer Operations	0	75K	75
N012	Pacific Marine Center	0	150K	150
W020	O'Hare Airport Observation	0	15K	15
		770K	1,218K	$1,988

federal register

Monday
March 5, 1984

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Saltonstall-Kennedy funds notice of availability/instruction to the public.

SUMMARY: For fiscal year 1984, Saltonstall-Kennedy funds are available to assist persons in carrying out research and development projects which address any aspect of a United States fishery (as herein defined) involving the United States fishing industry (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infrastructures. Projects may be funded through either grants, cooperative agreements or contracts. Any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands, any fishery development foundation or other private non-profit corporation located in Alaska, or any corporation, partnership, association or other entity, non-profit or otherwise, if a citizen of the United States (as defined by Section 2 of the Shipping Act of 1916 (46 U.S.C. 802)), is eligible to apply for funding under this solicitation. The National Marine Fisheries Service (NMFS), NMFS employees, and their immediate relatives are not eligible to apply.

This notice describes the conditions under which applications will be accepted and how NMFS will determine which applications it will fund. State and local Government applicants must comply with Executive Order 12372 regarding Intergovernmental Review of Federal Programs. The Catalogue of Federal Domestic Assistance number and title for this program are 11–427, "Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements." This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*. Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB No. 0648–0135.

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" within the context of the Order or its implementing guidelines because the solicitation does not significantly affect the economy, costs or prices, competition, employment, investment, or productivity. Because the solicitation is issued without prior opportunity for public comment, is is not subject to the provisions of the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Hutchinson, Industry Development Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone No: 202–634–7451.

I. Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use at least 60 percent of these funds each year to make grants to assist persons in carrying out research and development projects which address any aspect of United States fisheries, including, but not limited to, harvesting, processing, and marketing. There is no guarantee that sufficient funds will be available to make awards for all approved projects. United States fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. For fiscal year 1984, about $10 million of Saltonstall-Kennedy monies are available to fund fisheries research and development projects. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Saltonstall-Kennedy Activities

The Saltonstall-Kennedy grant program constitutes an important part of the NMFS fisheries development and utilization program. Under this program, NMFS will consider funding projects which relate to the development of fisheries within any NMFS Region and national projects which relate to the development of fisheries in two or more Regions.

The NMFS has two objectives for funding projects: (1) To maintain stability in and strengthen traditional fisheries; and (2) to provide for the growth of the fishing industry through increased use of nontraditional resources.

Traditional fisheries are those for which the existing fishing industry has the capability to fully harvest, process and market the available fishery resources as it has done historically. Stability in traditional fisheries can be influenced by resource fluctuations, changing economic conditions, and public perceptions about quality and safety. In order to maintain stability in traditional fisheries, the NMFS will support projects that increase the stability of the fishing industry to ensure that the industry remains competitive in world and domestic markets.

In order to support growth of the fishing industry, the NMFS will target its activities on non-traditional or unused fisheries such as Alaska groundfish, coastal pelagics in the South Atlantic and Gulf of Mexico, squid and mackerel in the North Atlantic, and others where impediments exist to industry use of these resources. The NMFS will support research which will lessen the risks associated with expansion by the present industry or entry by new participants into these fisheries.

NMFS consults with members of the fishing industry in funding fisheries research and development projects which address regional and national concerns involving stability in traditional fisheries and growth in nontraditional fisheries. The areas considered are as follows:

A. *Harvesting activities:* to demonstrate the technical feasibility of commercial or recreational harvesting of fisheries resources; to provide fishermen with information that documents the potential profitability of commercial or recreational harvesting activities; and to identify abundance, location, and seasonal characteristics of stocks of fish;

B. *Quality enhancement and control:* to develop, evaluate or demonstrate handling, sorting, grading, storage, processing, or distribution methods that will enable fishermen, processors, and those in the distribution chain to maintain or improve the quality of fish and fish products marketed commercially or caught by recreational fishermen; and to identify and correct any public health problems which may be impeding domestic and foreign market expansion;

C. *Domestic market development:* to increase domestic consumption of fish by increasing the use of nontraditional fisheries products in traditional markets or expanding the use of all fish in nontraditional markets; in recreational fisheries, to increase use of nontraditional species, to increase awareness of sport-fishing opportunities, and to expand the opportunities for and economic value of marine recreational fishing;

---

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

D. *Foreign market development;* to increase U.S. exports of fish and fish products with particular emphasis on the underutilized species and to publicize domestic recreational fishing opportunities for foreign visitors;

E. *Improvement in efficiency and productivity:* to lower the costs of supplying domestic fish and fish products to consumers; to increase the output or value of existing or new methods or techniques for harvesting, processing, distributing or marketing domestic fisheries products; and

F. *Economic and investment studies:* to document the cost and profitability of any activity that would enable the fishing industry to increase use of fisheries resources or to increase the value of fisheries products or to improve upon methodologies for ascertaining the economic value of recreational fisheries.

III. Regional and National Priorities

Fisheries research, development, and utilization applications should relate to one or more of the priority areas. The NMFS will consider other projects; however, funding will be available for exceptionally good projects outside the priority areas only if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will *not* be provided for projects primarily involving the following activities: (1) infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to artificial reefs or fish aggregating devices; and (6) extension activities such as newsletters or technology transfer unless identified as a necessary part of a specific project.

The NMFS encourages a regional approach to developing and strengthening U.S. fisheries. "Region" refers to a geographic area encompassed by a NMFS Region, i.e., Northeast, Southeast, Southwest, Northwest and Alaska. Projects addressing Regional fisheries development needs must be consistent with existing fisheries development plans. Projects addressing national concerns are those which require the coordinated participation of members of the fishing industry from more than one Region or involve activities such as generic domestic and export marketing activities or seafood quality and safety research in which results directly affect the fishing industry or consumers on a national scale. The NMFS has identified priorities in conjunction with fishing industry groups, other organizations and local governmental units having an interest in the development and use of fisheries in the region.

The fisheries and the major needs related to their development or full utilization which the NMFS will give priority for funding are:

A. *Northeast Region.* Priority will be given to species-oriented projects which support growth in the squid, mackerel, and hake fisheries or projects that include the following activities:

1. Develop new methods or techniques to process and use fish wastes, particularly dogfish and shellfish wastes. Projects must determine the technical and economic feasibility of the methods or techniques in actual use through in-plant demonstrations.

2. Conduct on-board demonstrations of methods to: (a) Increase the effectiveness of fisheries gear; (b) improve product quality through improved on-board handling and holding procedures; and (c) reduce operating costs of commercial fishing vessels. Projects must determine the technical and economic feasibility of these methods through demonstrations on vessles.

3. Conduct in-plant demonstrations of new or innovative processing equipment to allow processors to evaluate opportunities to make greater use of nontraditional species of fish. Projects must assess the technical and economic feasibility of using the equipment.

4. Conduct training activities for industry personnel in procedures to maintain the quality of fish as it moves through processing and distribution channels.

5. Conduct Regional export and domestic marketing programs which coordinate state, media and industry activities that will increase use of nontraditional species or develop new markets for traditional species. Such projects will be coordinated with other funded Regional or national marketing projects.

6. Develop and implement a plan to revive the shellfish industry in the county of Suffolk, New York with emphasis on clam seeding in sanitary waters, relocating spawner clams, and conducting a public education program to ensure product quality and safety.

7. Conduct activities to promote the stabilization and growth of the marine recreational fishing industry.

B. *Southeast Region.* 1. *Commercial.* Projects should concentrate on shifting current harvesting, processing, and marketing activity from traditional fisheries, such as shrimp, to alternate fisheries, particularly the coastal herrings, large coastal pelagics, and squid. Priority will be given to projects which:

a. Assess the commercial significance of stocks through contracted fishing vessels and spotter aircraft in the Southeast Region;

b. Develop, evaluate, and demonstrate new technology for the harvest of midwater schooling species in deeper offshore waters;

c. Develop, evaluate, and demonstrate new technology for on-board or shoreside handling, grading, and storage systems;

d. Develop new products or processes for underutilized species which provide evidence of consumer/market acceptance and a determination of economic feasibility;

e. Develop export or demestic markets for underutilized species. Proposals in this area will be closely coordinated at the national level. Approved projects will be consistent with national market development projects;

f. Define and resolve technical constraints limiting the effective marketing of wholesome consumer products from molluscan shellfish resources;

g. Demonstrate solutions to remaining problems hindering the use of Southeastern fishery species in the production and marketing of analog fishery products made from surimi; and

h. Provide alternate designs and/or field testing of improved shrimp fishing trawl designs to eliminate the catch of undesirable finfish, jelly fish, turtles, and debris.

2. *Recreational.* Projects are solicited which will either address problems affecting the stability of traditional recreational fisheries or will redirect sport fishing effort to presently underutilized species. Priority funding consideration will be given to projects which:

a. Develop a profile of marine recreational fishing in the Southeast to assist public and private sector organizations (e.g., Chambers of Commerce; recreation, park and tourism planning/administration agencies; financial institutions; and marine recreational fishing-related businesses) in stimulating economic development based on marine recreational fishing.

This profile should synthesize and summarize relevant existing information (e.g., fishing patterns; target species; overview of the recreational fishing industry; social, economic and demographic characteristics of anglers; trip expenditure information; and other pertinent data);

b. Assess access and infrastructure requirements needed to support further development of marine recreational fisheries in the U.S. Virgin Islands and Puerto Rico;

c. Determine and demonstrate the biological, engineering, and economic feasibility of utilizing artificial reefs and fish aggreegating devices to further develop recreational and commercial fisheries in the U.S. Virgin Islands and Puerto Rico; and

d. Develop a guide(s), suitable for use by domestic and foreign travelers, which identifies recreational fishing opportunities in the Southeast and describes how visitors can best take advantage of these opportunities. The guide should describe major target species; angling techniques; location of access facilities (piers, ramps, beach fishing areas, charter/headboat locations, etc.); techniques for handling and preparing catches, applicable fishing laws and regulations; key contacts/sources of additional information; and other pertinent information.

C. *Southwest Region.* The Southwest Region is comprised of two distinct geographic areas—the central and western Pacific Islands and the California coast. The island fisheries differ significantly in many respects from the mainland fisheries.

1. *Central and Western Pacific.* In the central and western Pacific, priority consideration will be given to projects that (a) address problems of tuna harvesting, and (b) contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands and the Trust Territories of the Pacific Islands. All proposals should be consistent with cultural and social attitudes of island people.

Proposals which address problems in the following areas will be given priority for funding.

a. *Industry Development.* Projects to develop Shoreside Fishery Facilities and Seafood Marketing Outlets by providing business management expertise, quality control systems, and marketing assistance will be considered. Projects designed to develop new markets and promote Pacific Island seafood products will also be considered. Such projects should have the ultimate goal of creating self-sustaining business enterprises or creating new marketing opportunities.

b. *Tuna.* Projects which investigate handlining for sashimi grade tuna and pole-and-line bait fishing will be considered. In view of the recent growth in the Western Pacific tuna purse seine fishery, consideration of tuna purse seine charters will be limited.

c. *Other Pelagic Species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus upon developing local and overseas market outlets. Particular attention should be focused on maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing and storage methods.

d. *Trochus and Giant Clams.* Proposals will be considered for continued research on trochus and giant clams as well as projects that could transfer trochus and giant clam reseeding technology to other island areas.

e. *Deepwater Shrimp.* Proposals should focus on trap design for small boat fishermen, area surveys, and the development of shrimp marketing outlets.

f. *Bottomfish.* Snappers and groupers exist in considerable abundance in many Pacific Island areas. Projects should expand harvesting opportunities and develop marketing channels (local and export) for these species. Projects for bottomfish development in areas where the resource may be distressed and unable to withstand added fishing pressure will not be funded.

g. *Seamount Groundfish.* Alfonsin and armorhead resources are presently a target of a directed Japanese fishery and are not harvested by U.S. fishermen. Projects to demonstrate the technical and economic feasibility of harvesting and marketing seamount resources will be considered.

h. *Vessel Support Facilities.* Proposals for the design, engineering and construction of vessel support facilities (e.g., boat launch ramps, docks, etc.) will be considered provided that proposals requesting construction funds contribute matching funds equal to the level of requested Federal S–K funding. Proposals for such facilities should be targeted for those areas where these is a demonstrable need by local fishermen.

The National Marine Fisheries Service does not plan to support the use of S–K funds for projects related to baitfish culture or fish aggregation devices with the following exceptions:

a. *Baitfish Culture.* Projects demonstrating use of cultured baitfish in sea trials in order to determine technical and economic feasibility.

b. *Fish Aggregation Devices.* The major problem affecting fish aggregation devices (FAD) throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a recent mooring design study sponsored by the South Pacific Commission, NMFS has recently approved funding for a FAD project in Yap and is reviewing a similar project in American Samoa. Therefore, the NMFS will not fund FAD related research in the Pacific during this year's funding cycle.

2. *California.* Pacific whiting, shortbelly rockfish, and jack mackerel are recognized as being the highest priority species for commercial development off California. Projects that demonstrate fishing techniques, on-board handling, processing, and quality technology as applied to these species, and projects that investigate alternative product forms and markets for Pacific albacore will be considered.

Additionally, projects that include the following activities for commercial and recreational fisheries will be considered for funding.

a. *Waste Utilization.* Projects that develop and demonstrate practical solutions to waste disposal or waste utilization problems in all fisheries and determine technical and economic feasibility.

b. *Quality Improvement.* Test the feasibility of developing a seafood quality program for fresh/frozen West Coast fish covering all [illegible] of product handling from on-board the vessel to shoreside processing and distribution.

c. *Consumer Education.* Fixed-term projects with the objective of educating young Americans on the desirability of seafood will be considered for 1-year funding.

d. *Economic Analysis.* Projects that develop economic profiles of business opportunities within the West Coast fishing industry.

e. *Recreational Fisheries.*

(1) Market Research Studies—Emphasis on market research of the marine recreational fishing industry focusing on angler attitudes.

(2) Recreational Fishing Industry Promotion—Projects that coordinate regional tourist industry promotion programs for marine recreational activities.

D. *Northwest Region.* Priority will be given to projects which:

1. Develop new and/or improved harvesting, processing, distribution and marketing techniques or methods to increase use of such nontraditional

species as Pacific whiting, blue shark, saury, squid, short-belly rockfish, dogfish, and other species known to have potential for development. Projects should include on-board or in-plant demonstrations and assess the technical and economic feasibility of the techniques or methods.

2. Demonstrate and instruct in procedures to maintain or improve the quality or fish or fish products as they move from vessels through processing and distribution channels.

3. Develop information or materials to promote greater consumption of fresh and frozen domestic seafood, and conduct consumer and trade education programs using the materials to increase use of nontraditional species or develop new markets for traditional species. Such programs will be coordinated with other Regional and/or national marketing activities. Such activities may include emphasis on the health and nutritional qualities, availability and variety of seafood, and methods of preparation. Activities should be designed to increase consumer awareness.

4. Develop new target markets for seafood harvested in the U.S. fishery conservation zone by the West Coast fishing industry through market research, product testing, and product introduction into specific markets.

5. Conduct surveys to identify and evaluate consumers' preferences and biases for target species, angling methods, and supporting facilities in marine recreational fisheries; and develop a program to coordinate industry efforts with the travel and tourism industry to increase awareness of opportunities and participation in marine recreational fisheries, especially for non-salmonid species.

E. *Alaska Region*. The growing importance of groundfish to the economic health of the west coast fishing industry continues to require that the Alaska development program focus on the Alaska groundfish resource. Industry needs in this fledgling fishery are diverse and substantial. Priority needs have been identified in the areas of maximizing product mix alternatives, increased utilization of existing vessels and processing facilities, and stimulation of domestic and export market opportunities for diverse groundfish products. Pollock, because of the resource size and current utilization by foreign nations, has been identified as the highest priority species for development.

Projects to be given priority for funding should resolve problems associated with the full utilization of groundfish related to the following areas:

1. Improve the quality of fish delivered to processing facilities.

2. Conduct commercial scale processing tests of groundfish products to assess technical and economic feasibility and market acceptability.

3. Investigate alternatives for utilizing groundfish processing by-products.

Development proposals which address problems in the traditional segments of the Alaska fishing industry will be considered. Proposed projects in these areas should incorporate solutions that will work in remote geographic areas and should be complementary to state and private sector development activities.

F. *National Priorities.*

1. *Domestic Market Development.* NMFS intends to fund projects which are generic in approach and which will contribute to the increased use of seafood in the U.S. marketplace. Priority will be given to projects which address any of the following:

a. Development and dissemination of consumer education materials using mass media and point of sale presentations. Projects addressing youth education activities are encouraged.

b. Conduct activities to educate the food service industry on fish and shellfish products with an emphasis on providing information related to buying, handling, sanitation, and preparation.

c. Development of a marketing strategy to increase food industry use of domestically produced squid products.

2. *Export Market Development.* The NMFS intends to fund projects which provide direct access for U.S. exporters to buyers in other countries and will give priority to funding:

a. *International Food Shows:*

(1) Management of U.S. Seafood Sales Exhibitions at four key international food shows, including (a) IFE'85 in London, England, (b) ANUGA'85 in Cologne, West Germany, (c) Alimentaria'86 in Barcelona, Spain, and (d) SIAL'86 in Paris, France. If selected, the applicant will be required to work with U.S. Embassy officials and Export Development Office officials overseas to develop cost-effective programs to support each show. The applicant must use existing U.S. Seafood Exhibition structures constructed under previous grants. Funding will be providing for: (a) securing 250 to 500 square meters of floor space at each event, (b) transporting and refurbishing the portable exhibit system, and (c) direct operating costs.

(2) Management of small-scale food shows in various parts of the world during 1985 and 1986. The use of cost effective methods of product presentation must be demonstrated in the application. Funding will be provided for floor space rental, booth construction, the shipment and display of generic products, and direct operating costs. The exhibitor will promote fish and shellfish on a generic basis and prepare and distribute a report on resulting trade leads.

b. *Export Marketing Initiatives:* Perform export market consumer and trade education activities in export markets for which there is sales potential for U.S. products and U.S. industry interest. Focus will be placed on underutilized species and traditional species in new markets.

3. *Improving Quality, Safety, and Use of Fish and Fish Products.* The NMFS is soliciting projects which support its goal of providing consumers with a wide variety of wholesome, nutritious fish and fish products of a good quality. The research priorities for 1984 areas are as follows:

a. *Rapid Methods:* Develop specific cost-effective rapid methods to:

(1) Detect and remove parasites in fish and shellfish.

(2) Objectively determine the quantity of contents of glazed block frozen seafood (shrimp, scallops, crabmeat, fillets) based upon the temperature at which the thermal center of the product passes through decrystallization.

(3) Detect ciguatera in species of Caribbean and Pacific origin including isolation and/or purification of ciguatoxin.

b. *Irradiation Preservation:* Determine the technical and economic feasibility of applying radiation preservation technology to fish and shellfish within the framework of FDA's advance notice of proposed rulemaking published in the March 27, 1981, issue of the **Federal Register**, pp. 18992–18994, and in view of seafood and other food products irradiation research conducted to date.

c. *Seafood Quality/Decomposition:*

(1) Plan, arrange for, conduct, and publish proceedings of an International Symposium to identify and objectively measure quality/decomposition indicators in seafood.

(2) Develop an alternative to the use of bisulfite for the treatment of black spot on shrimp.

(3) Conduct bacterial comparisons over time and various holding temperatures for vacuum tray packed vs. atmosphere packed trayed seafood.

d. *Authentic Pack Studies:* Conduct authentic pack studies according to the FDA standard protocol for authentic pack studies permitting objective and subjective measurements of changes in inherent textural and sensory characteristics at various intervals of storage in Atlantic and Pacific squid, Alaskan pollock, dogfish, and red hake.

e. *Minced Fish Utilization:* Research in this area should be an extension of research currently in process or recently completed which has focused on the technical and economic feasibility of commercial scale production of surimi and minced fish. Priorities identified below relate to areas of work which have not been addressed in previous research but are necessary to ensure product safety and quality as well as consumer acceptability.

(1) Develop experimental fabricated food products having a potential for using large quantities of minced fish meat from mixed species and test market the products for edibility acceptance.

(2) Conduct refrigerated and/or frozen storage studies on surimi and surimi-based products under typical domestic market conditions to determine quality and spoilage indicators and changes in such indicators which occur during storage.

(3) Conduct chemistry and food engineering research to improve textural and other sensory properties of surimi and surimi-based products to suit U.S. taste preferences and then document consumer reaction to the improvements.

(4) Plan, arrange for, conduct, and publish proceedings of an International Symposium on engineered and structured seafoods, their technology, and market potential.

f. *Training and Education:* Develop training materials and conduct seminars for industry inspection personnel to:

(1) Provide instruction in good manufacturing practices for U.S. fishery products; and

(2) Provide instruction in the evaluation of the quality and manufacture of commercially significant fishery products for sale in domestic and export markets.

g. *Imported Product Survey:* Conduct surveys of imported canned tuna, surimi-based products, and fish blocks containing minced fish meat to evaluate elements of public health (e.g., can integrity, bones) and commercial significance (e.g., net weight, species substitution) relative to recognized standards and/or comparable U.S.-produced products.

4. *Developing the Marine Recreational Fishing Industry.* The NMFS is soliciting projects which will remove impediments to development of the Marine Recreational Fishing (MRF) industry. The major impediments, and potential methods for removing these impediments, are identified and discussed in a report recently completed by the Sport Fishing Institute and NMFS titled, "Final Report, Phase II, The Marine Recreational Fishing Industry and Opportunities for Development." This report is available from: Director, Office of Industry Services, National Marine Fisheries Service, Washington, D.C. 20235.

The major impediments to be addressed by the NMFS S–K program are: (a) Lack of sufficient and coordinated marketing of MRF services through the U.S. and international travel and tourism industries; (b) angler biases as to which species are preferable targets; (c) complexity and length of the permitting process for artificial reefs; (d) lack of the export markets for U.S. produced fishing tackle. Projects will be selected only to the extent that solutions to these impediments are national vs. regional in nature.

IV. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any fishery development foundation or other private non-profit corporation located in Alaska;

4. Any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[1] No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be funded. The NMFS encourages women and minority individuals and groups to submit applications. NMFS employees (or their immediate families, including full, part-time, and intermittent personnel) and NMFS offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1984, the NMFS will have an estimated $10 million available to fund the fishery research and development projects solicited herein. Grants or cooperative agreements will generally be awarded for a period of 1 year. Applications will be considered for projects which extend for up to 3 years. Multi-year projects must be resubmitted each year. Continued funding will be contingent on the availability of funds, the extent to which project objectives are met during the prior year, and the continued priority of the project in subsequent years. Publication of this announcement shall not obligate the NMFS to award any specific grant or to obligate the entire amount of funds available or any part thereof.

C. Cost-Sharing Requirements

The amount of a grant must be at least 50 percent of the total cost of the project. The non-Federal share may include funds received from private sources or from State or local Governments or the value of in-kind contributions. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

---

[1] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) the title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the cost of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the U.S. Virgin Islands under the provisions of 48 U.S.C. 1469a. The total project costs and the percentage of cost sharing required will be determined as described below.

1. *Determining Total Project Cost*

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a formal grant, cooperative agreement, or contract between the applicant and an authorized representative of the United States and ends when the applicant submits a final performance report that is accepted by an authorized representative. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations up to the point of formal award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations." In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated.

2. *Determining the Level of Cost Sharing Required*

The percentage of the total project costs that must be provided from non-Federal sources is as follows:

a. *20 percent.* For projects that benefit the fishing industry and/or the consuming public, but offer no unique advantage to specific industry sectors, the non-Federal cost share shall be no less than 20 percent of the total project cost. These projects would ordinarily be conducted by or for State or local government entities or by non-profit organizations.

b. *30 percent.* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share shall be no less than 30 percent of the total project cost.

c. *40 percent.* For projects which involve significant fishing industry participation, entail a limited risk, and in the prospects for immediate future gain for project are significant, the non-Federal cost share shall be no less than 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to developing and strengthening the U.S. fishing industry and cost estimates as they relate to specific aspects of the project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applicants should contact the appropriate regional office for guidance in preparing project descriptions. Such consultations with NMFS staff will not result in more favorable consideration of any project. Applications shall be submitted in the following format:

1. *Cover Sheet*

An applicant shall use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices or NMFS Washington Office listed in Section IV.E.

2. *Project Summary*

Each project within the application shall contain a summary of not more than one page which provides the following information:

a. Project title.
b. Name of applicant.
c. Primary objective of project.
d. Summary of work to be performed.
e. Principal geographic impact of project (local, statewide, regional, national).
f. Total Federal funds requested; total amount and percentage of total project costs.
g. Project costs to be provided from non-Federal Government sources; total amount and percentage of total project costs.
h. Total project costs.

3. *Project Description*

Each project within the application shall be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, the NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project shall be described as follows:

a. *Identification of Problem(s).* Describe how existing conditions prevent the U.S. fishing industry from developing a fishery or using existing fisheries. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishing resources.

b. *Project Goals and Objectives.* Describe what the project will accomplish and how this will eliminate or reduce the problem(s) described above. In addition, describe the impact of the proposed work in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factor.

c. *Appropriateness and Need for Government Financial Assistance.* Explain why members of the fishing industry are unable to fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe (1) the level of participation by the NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required to ensure the success of the project(s); and (2) the nature of such participation. In addition, list names and addresses of the principal persons or groups consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons or groups who will be involved in the project, their qualifications, and their level of involvement in the project. Provide copies of any agreements between the applicant and participants who are not directly employed by the applicant which describe the specific tasks they will perform.

h. *Monitoring of Project Performance.* Describe how the progress of the project will be monitored and who will participate in the monitoring. Specify what actions will be taken in the event specific project tasks become unattainable. This is particularly important in demonstration projects that can be affected by factors beyond the control of the applicant.

i. *Project Benefits.* Identify the sectors of the fishing industry that will benefit from the proposed work and how they will benefit. Describe benefits in terms that can be measured. All projects must clearly describe how information gained from the projects will be made known or transferred to the fishing industry.

j. *Evaluation of Project Benefits.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Provide a detailed budget of project costs, identifying in particular: salaries, fringe benefits, travel costs, equipment rental, supplies, contracts (including project evaluation and final report preparation costs if contracted), overhead, and other administrative and technical costs of the project. Costs must be identified for specific phases of a project. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs by primary recipients of S-K funds.

l. *Cost Sharing for the Project.* Identify project costs which will be funded from non-Federal sources, including in-kind contributions. Project costs provided by the applicant cannot exceed 50 percent of total project costs.

4. *Project Consolidation*

Applicants may submit two or more projects under one proposal but must identify project costs separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting Documentation*

This section shall include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily review material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline*

The NMFS will accept application for funding under this program between March 5, 1984 and May 7, 1984. An application will be considered to be timely filed if (a) the application is in any of the offices listed below on or before May 7, 1984, or (b) the application is postmarked (First Class Mail) no later than May 1, 1984.

2. *Submission of Applications to the NMFS*

Applicants shall submit one signed original and two (2) copies of the complete application. Applications are not to be bound in any manner.

a. Application relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):

Regional Director, National Marine Fisheries Service, 7 Pleasant Street, Gloucester, MA 01930, Telephone No.: (617) 281-3600.

If delivered by other than the U.S. Postal Service, use the following address: Post Office Bldg., Room 201, 15 Dale Ave., Gloucester, MA 01930.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands):

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893-3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands):

Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No.: (213) 548-2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):

Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115, Telephone No.: (206) 527-6150.

Alaska Region (Alaska):

Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, Telephone No.: (907) 586-7221.

b. Applications that do not directly address the development of a particular fishery or region of the country but do address broad national concerns, such as impediments to increased use of fish and fish products both domestically and abroad, impediments to recreational fishing which are national in scope, industry productivity or efficiency, product quality and safety, or consumer welfare identified in Section III, Regional and National Priorities, should be sent to: Director, Office of Industry Services, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

The NMFS shall review all applications to determine the appropriate reviewing office. NMFS determination of this matter shall be final.

V. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which Office should evaluate the proposed work. This will normally be the office where the application is filed. The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and consumer groups. The regional and Washington offices of the NMFS will make project descriptions available for review as follows:

1. *Public review and comment.* Regional projects may be inspected at the office to which they are submitted. All projects will be available for inspection at the NMFS Office of Industry Services, 3300 Whitehaven Street NW., Room 357, Washington, D.C. from May 16, 1984 to May 30, 1984. Written comments will be accepted at the regional or Washington offices until May 30, 1984.

2. *Consultation with members of the fishing industry.* The NMFS shall, in its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government agencies.* Projects will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following criteria:

a. Adequacy of research/development/demonstration for resolving an impediment and possibilities of securing productive results (20 points).

b. Soundness of design/technical approach for resolving an impediment (20 points).

c. Organization and management of the project, including qualifications and previous related experience of the management team and the personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (20 points).

e. Appropriateness of the budget in terms of the work to be performed (20 points).

After the technical evaluation, each reviewing Office will convene a panel of NMFS, fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. The panel will consider the significance of the problem addressed in the project along with the technical evaluation and will rank each project in terms of importance or need for funding. The panel will make recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated by the reviewing offices, the Regional Directors for regional projects and the Director, Office of Industry Services for national projects will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries for review. The Assistant Administrator for Fisheries will determine the number of projects to be funded based on the recommendations provided to him/her, consistency of projects with national fisheries policy, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in preaward discussions between the applicant and NOAA/NMFS Program and administrative representatives. The Department of Commerce will review all recommended projects and appropriate funding prior to final authority to proceed. The funding instrument will be determined by NOAA Grants Officers.

VI. Administrative Requirements

A. Obligations of the Applicant

An Applicant shall:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is funded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the NMFS.

4. If a project is funded, keep records sufficient to disclose the use made of grant funds, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS will provide a proportionate share of funds to pay for an audit.

5. If a project is funded, submit quarterly project status reports to the NMFS within thirty days after the end of each calendar quarter within the time frame agreement and to the individual specified as the technical monitor in the funding agreement on the use of funds and progress of the project. The content of these reports shall be determined by the MNFS official assigned to monitor the project activities and shall include, at a minimum:

a. the degree to which goals or objectives were achieved as originally projected;

b. where necessary, the reasons why goals or objectives are not being met; and

c. any change in plans or redirection of resources or activities and the reason therefore.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. This report shall describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable the NMFS to assess the success of the completed project. Results shall be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make

productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget Circulars A-102 (for use by states and local governments) and A-110 (for use by universities, hospitals, other non-profit, and profit organizations) which contain terms and conditions of Federal financial assistance awards.

Audits shall be conducted in accordance with either Attachment P of OMB Circular A-102 or Attachment F of OMB Circular A-110 which provides that a single organization wide financial and compliance audit shall be performed on an annual or biannual basis. Such audits shall cover all Federal funds, including Department of Commerce funds, received by the organization during the 1 or 2-year fiscal period. Cost principles for audits are identified in OMB Circular A-87 (State and local governments), OMB Circular A-21 (universities), OMB Circular A-122 (non-profit organizations), and CFR-43 (commercial organizations).

8. Submit 25 copies of any publications printed with grant funds and such additional reports as may be required by the NMFS.

B. Obligations of the National Marine Fisheries Service

The NMFS shall:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals;

3. Monitor all projects to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. Legal Requirements

The applicant shall be required to satisfy the requirements of applicable local, State and Federal Laws.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Signed at Washington, D.C. this 29th day of February 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-[illegible] Filed 3-2-84; 8:45 am]

BILLING CODE [illegible]

QUESTIONS SUBMITTED BY SENATOR STEVENS

Question:

Explanation: NOAA has proposed a smaller appropriation for the Fishermen's Guarantee Fund in FY85 due to the expectation that there will be a reduced number of claims.

Question 1: If the actual claims are greater than expected, will there be a supplemental appropriation to make up the difference?

Answer:

Yes, a supplemental appropriation would most likely be proposed if the actual claim experience is greater than that predicted.

Question:

Explanation: NOAA is requesting that receipts from foreign fishing fees in the fisheries loan fund be distributed for general use in the NOAA budget, and for additional funding for the Coast Guard.

Question 2: Why has the decision been made to redirect monies set aside for development of U.S. fisheries to administrative functions?

Answer:

The receipts from foreign fishing fees in the fisheries loan fund would be used as an offset to the OR&F appropriations for fisheries conservation and management programs that not only benefit industry directly over the long term, but represent a proper Federal role, implementing our public trust (stewardship) responsibilities. We feel that the use of these funds in the manner proposed is consistent with the Magnuson Act and provides for the development of U.S. Fisheries and not administrative functions.

Question:

Explanation: NOAA is going to axe Sea Grant.

Question 3: Why does NOAA feel that the goals of the Sea Grant program have been achieved on the local, state, and regional levels at a time when marine industries in the U.S. are struggling to compete with foreign concerns?

Answer:

The goal of the National Sea Grant College Program was to establish a national network of institutions with strong multidisciplinary programs in marine science. That network is now in place. The research and advisory service activities conducted at those institutions should now be supported by the state, regional and private interests which benefit from their results.

Question:

Explanation: NOAA is proposing a $4 million reduction for the councils. Will the proposed funding be sufficient to allow the management councils to operate at existing levels, or at increased levels if circumstances warrant increased activity?

Answer:

We expect the remaining Council program will continue to provide fishery management plans and amendments, as necessary, to fulfill the intent of the Magnuson Act for the highest priority fisheries of the United States. By the end of FY 1985, 34 Fishery Management Plans of 40 anticipated will be implemented and the remaining funding will provide for new plans as well as amendments to existing plans when and if necessary.

Question:

Explanation: NOAA has proposed the termination of grants to states for research and developmnent and enhancement of anadromous fish species. It rationalized this by saying that the states were not using the funds appropriately. Why does NOAA feel that the grants given to states for these purposes are not being used as intended?

Answer:

The structure of the present grant-in-aid programs (P.L. 88-309 and P.L. 89-304) provides only limited Federal control to ensure that Federal needs are met. Many of the projects funded by grants from these programs are focused on local or regional problems and some of the benefits do not have national significance. In these cases, it is more appropriate for state and industry to provide the desired financial support. In other cases, funds are provided to states that are not directly involved with marine fishery issues that would support the basic mission of NOAA.

Question:

Explanation: NOAA is reducing fisheries development programs by $8 million. Is private industry capable of bearing the total costs of promoting the development of markets for underutilized, non-traditional fisheries?

Answer:

The proposed reduction of the fisheries development programs by $8 million is based on a realignment of Federal budget resources and the complementary relative roles of industry and government in general in fisheries development. After the proposed changes are completed we expect the solid, long-term growth of the fisheries resources to continue. The potential for the fishing industry to be a "growth" industry will be unchanged. However, the industry will have the responsibility to take the lead in achieving full domestic utilization of marine fishery resources available for U.S. exploitation. Government management efforts such as the "fish and chips" policy on TALFF, joint ventures, direct government to government negotiations on non-tariff and tariff barriers to exports, and export opportunity leads through other parts of DOC (ITA) will continue to benefit U.S. fisheries exporters.

QUESTIONS SUBMITTED BY SENATOR WEICKER

Question:

In the FY 1981 Supplemental Appropriation there was congressional report language stipulating that the number of full time positions within NOAA should not be reduced below the 12,000 level. In the FY 1985 budget the administrtaion is proposing a personnel reduction of approximately 1500 positions, from 11,823 to 10,322.

To what extent are these reductions tied to program reductions?

Answer:

The personnel reduction numbers you cited represent NOAA's estimated permanent September 30 employment figures for FY 1984 and FY 1985. The reduction in permanent positions total 1,860 which represents a drop from 12,752 in FY 1984 to 10,892 in FY 1985. These permanent position reductions are categorized as follows:

	Perm. Pos.
Direct program reductions	-1,075
Program support reductions	-168
A-76 and Management savings	-617
	- 1,860

Question:

If Congress restores the programs proposed for elimination and reduction will there be sufficient manpower to run these programs?

Answer:

Yes. Permanent positions and FTE ceiling have been adjusted routinely in the past to reflect final Congressional action on the budget.

Question:

What funding level would be required to maintain the current personnel level?

Answer:

Approximately $999,884,000 is required to maintain the FY 1984 personnel level. This amount assumes the $27M for Aviation Weather services will continue to be funded through the FAA's Airport and Airway Trust Fund. The following is a breakdown of the funding required:

Account	Amount (in thousands)
Operations, Research and Facilities	$ 987,777
Coastal Zone Management	5,557
Fishing Vessel and Gear Damage Compensation Fund	...
Fishermen's Contingency Fund	250
Foreign Fishing Observer Fund	4,500
Fishermen's Guaranty Fund	1,800
	$ 999,884

These amounts represent the FY 1984 program requirements only. In FY 1985, certain programs such as the satellite systems and services would require substantial increases for procurement, maintenance and operations to support the existing program requirements.

Question:

In 1980, I introduced legislation focusing on the loss of fisheries resources caused by abandoned fishing gear, primarily gill nets. Now there is a concern about marine mammals and birds becoming entangled and dying in these nets.

What has the National Marine Fisheries Service done toward reducing the loss of marine life due to abandoned gear? Can NMFS provide estimates of these losses?

Answer:

The National Marine Fisheries Service (NMFS) is aware of the concern about marine mammals and birds becoming entangled and dying in abandoned fishing gear, primarily gill nets. In FY 1984, NMFS is spending approximately $4.4 million on marine mammal and protected species research, and an additional $4.4 million in support of protected species management activities. Information derived from marine mammal and protected species research is necessary for NMFS to fulfill its Marine Mammal Protection Act and Endangered Species Act responsibilities.

The National Marine Fisheries Service will co-sponsor, along with the Fish and Wildlife Service, The Marine Mammal Commission, and the Pacific Sea Grant College Program, an international workshop, November 26-29, 1984 to review the state of knowledge of the fate and impact of debris with special emphasis being placed on the North Pacific region. Scientists of various disciplines, fishermen, gear manufacturers, conservationists and other marine users throughout the world have been invited to attend. The workshop will review what is known about the impact of marine debris, the extent of the problem and identify possible mitigating actions and research needs. A steering committee for the workshop has been convened, an agenda developed, and letters of invitation have been mailed.

In addition, letters to coastal states have been distributed requesting information about existing laws prohibiting overborard discarding of netting material. Draft guidelines are being prepared to apply restrictions on domestic fishermen about discarding debris similar to those already in force on foreign fishermen. NMFS has also designed a coordintor for the workshop and for management activities.

Question:

Can NMFS provide estimates of those levels?

Answer:

The extent of the entanglement issue is unknown. NMFS scientists have hypothesized that the number of marine mammals and seabirds killed or injured in discarded fishing gear is substantial. NMFS scientists have estimated that an average of 50,000 Northern Fur Seals may die each year due to direct effects of entanglement. This mortality may represent a loss of approximately 5% per year. In addition, NMFS scientists have observed endangered Hawaiian monk seals entangled in discarded fishing gear and other debris in the Hawaiian archipelago. No estimate of the extent of this entanglement has been made.

Question:

In March NOAA submitted a reprogramming request of $14.4 million from "various subactivities."

Considering how lean the NOAA budget is, how can these "various subactivities" not include programs which the subcommittee has fought to support?

Answer:

Of the $14,433K request, only $11,843K was identified for reprogramming to fund the January 1984 Federal pay increase and related needs. This amount was distributed evenly across all programs and should not have any appreciable impact on the programs.

Question:

What was the total FY 1984 reprogramming request to the Department from NOAA, and how much did the Department allow?

What was the rationale for their denials?

Answer:

NOAA requested reprogramming for several items which were not included in the final package. A total of $4 million was requested to fund severance cuts for positions eliminated in FY84 Congressional reductions. It was found that most of these position savings had already occurred through attrition and NOAA withdrew the request. Wage marine pay increases ($1.4 million) were absorbed in the same line items they occurred and did not require reprogramming. Funding for the two satellite operations contracts ($1 million) was accommodated within the amounts appropriated for the line items involved and represented management choice, not reprogramming.

Question:

I am very concerned by the controversy surrounding the A-76 studies and the oversight of chart distribution contracts. Several individuals who were responsible for overseeing contracts and A-76 reviews have either resigned or been relieved of their assignments. Why?

Who is in charge of these activities for NOAA?

Answer:

The following changes have taken place with regard to personnel connected with the NOAA A-76 process.

Mr. Byron Daugherty was appointed Alternate Principal Reviewer for Phase I of the Aeronautical Chart Branch A-76 Review on March 31, 1983, by RADM Kelly E. Taggart, Acting Assistant Administrator for NOS. His appointment was based upon the recommendation of RADM H. R. Lippold, Jr., (former Director of C&GS), and Mr. Walter Chappas (former Chief of the Aeronautical Charting Division). Mr. Daugherty was selected for this assignment because of his administrative and management experience related to aeronautical charting. It was subsequently determined that Mr. Daugherty's position as head of the Charting and Geodetic Services Budget Group required his full-time attention, and based upon the recommendation of RADM Lippold, Mr. Daugherty was replaced by Mr. Mike Smith on September 30, 1983. The employment status of Mr. Daugherty has not changed either as a result of his appointment or subsequent removal from his Principal Reviewer duties.

Mr. Edwin Hawbecker was appointed Principal Reviewer for Phase I of the NOS Marine Chart Branch A-76 Review by RADM Kelly E. Taggart, Acting Assistant Administrator for NOS. His appointment was based on the recommendations of RADM H. R. Lippold, Jr. (former Director of C&GS), and Capt. C. William Hayes, Chief of the Marine Chart Branch. Mr. Hawbecker was not appointed Principal Reviewer of Phase II for health reasons. He had recently recovered from a heart attack and was subjected to an inordinate level of stress during the study. During his A-76 assignment, Mr. Hawbecker served under a temporary promotion. Upon completion of Phase I, he was returned to his previous status and rank.

The A-76 review of the Geodesy program was initially planned as three separate studies. On March 31, 1983, RADM Kelly E. Taggart, Acting Assistant Administrator for NOS Appointed the following personnel to serve as

Principal Reviewers and Alternate Principal Reviewers.

	Principal Reviewer/Alternate	
Vertical Control Network	Sandford Holdahl	James Stem
Geodetic Information Center	Ed McKay	Steve Luckey
Horizontal Geodetic Network	Gary Young	David Zilkoski

These appointments were based upon the recommendations of RADM H. R. Lippold, Jr. (former Director of C&GS), and RADM John Bossler (former Chief, National Geodetic Survey Division). The listed personnel were selected for these assignments because of their management experience and technical expertise in the Geodesy program. It was subsequently determined by NOS management that the three studies of the Geodesy program should be consolidated into one A-76 review. On September 22, 1983, RADM Kelly E. Taggart appointed Sandford Holdahl as Principal Reviewer and Ed McKay as Alternate Principal Reviewer for the Consolidated Geodetic Activities A-76 Review. The employment status of all personnel listed has not changed either as a result of their appointment or subsequent removal from Principal Review or Alternate Principal Reviewer responsibilities.

Capt. K. William Jeffers was appointed Alternate Principal Reviewer for the Pacific Marine Center A-76 Review by RADM Kelly E. Taggart, Acting Assistant Administrator for NOS. His appointment was based on the recommendation of RADM Robert Munson, Director, Office of Marine Operations. Capt. Jeffers was selected for the assignment because of his technical expertise and familiarity with Marine Center operations. Capt. Jeffers retired in February 1984, and was replaced as Alternate Principal Reviewer. Based upon the recommendation of RADM Munson, Capt. Ned. C. Austin was appointed by Paul Wolff, Assistant Administrator for NOS to serve as Alternate Principal Reviewer for the Pacific Marine Center A-76 Review.

Mr. Armor Lane was appointed Principal Reviewer for the Tides and Water Levels Branch and the Circulation Section A-76 Reviews by RADM Kelly E. Taggart, Acting Assistant Administrator for NOS. His appointment was based upon the recommendation of RADM Wesley Hull, former Director, Office of Oceanography and Marine Services. Mr. Lane was selected for this assignment because of his management experience and technical expertise in the subject areas. Mr. Lane was subsequently named as Chief, Ocean Requirements and Data Analysis Division and was replaced as Principal Reviewer because of the conflicting demands of his new position. Upon the recommendation of Dr. John Hayes, Director, Office of Oceanography and Marine Services, Mr. Lane's Principal Reviewer responsibilities were assigned to Mr. Millington Lockwood on January 13, 1984. The employment status of Mr. Lane has not changed either as a result of his appointment as Principal Reviewer or his subsequent reassignment

Mr. William Monteith was appointed Alternate Principal Reviewer for Phase I of the NOS Marine Chart Branch A-76 Review by RADM Kelly E. Taggart, Acting Assistant Administrator for NOS. His appointment was based upon the recommendation of RADM H. R. Lippold, Jr. (former Director of C&GS), and Capt. C. William Hayes Chief of the Marine Chart Branch. Mr. Monteith was selected for the assignment because of his management experience and technical expertise in nautical cartography. Mr. Monteith was not appointed Principal Reviewer for Phase II when it became apparent that his position might be adversely affected by the results of that study. The OMB A-76 Circular specifies that a Principal Reviewer cannot be an employee whose position may be affected by the results of the study. Mr. Paul Wolff, Assistant Administrator of NOS, RADM John Bossler, Director of C&GS, and Capt. Hayes were involved in the decision not to appoint Mr. Monteith as Principal Reviewer for Phases II and III. The employment status of Mr. Monteith has not changed as a result of his involvement in the A-76 process.

Mr. Robert Souders served as Principal Reviewer for the NOS Distribution Services A-76 Review. The review was completed in April 1983. Following the review and the subsequent contract award, Mr. Souders was appointed as Contracting Officer's Technical Representative (COTR) for the Distribution Services contract. He was appointed COTR by Walter J. Chappas, Chief, Aeronautical Charting Division. Mr. Souders was selected for this assignment based on his experience with contracting and his prior A-76 experience as Principal Reviewer.

Based on the extensive use of computers in the performance of this contract, it was determined that the COTR should have an extensive background in computers. Mr. Souders does not have such experience. The decision to replace Mr. Souders as COTR was made by Mr. Paul Wolff, Assistant Administrator for NOS, and concurred in by Mr. William Matuszeski, Acting Deputy Assistant Administrator for NOS, RADM John Bossler, Director of C&GS, and Mr. Robert Rollins, Chief of the MB Staff. The employment status of Mr. Souders has not changed either as a result of his appointment or subsequent removal from his COTR duties.

Question

The NOAA budget is projecting an estimated savings of $6.1 million by contracting out services, even though the A-76 studies are not yet complete.

Isn't it premature to project savings, particularly when so many questions have been raised in Congress regarding the A-76 studies?

Answer:

No, NOAA does not believe that it is premature to project savings from A-76 studies. The estimated savings included in the President's FY 1985 Budget are based on a formula derived from government-wide experiences in implementing

OMB Circular A-76. Projected savings from A-76 were included in the budgets for all agencies, not just for NOAA. We expect NOAA's actual savings may exceed the estimates contained in the Budget.

Question:

The work of Sea Grant institutions has led to a number of demonstrable economic benefits, many of which are the results of high-risk, broadly based projects. For example, in 1981, commercial products that were developed from 19 products supported by Sea Grant resulted in sales ranging from $44-62 million. This value exceeds the highest annual federal appropriation ($41.8M in FY 1981) to the National Sea Grant College program. Essentially, we have seen a very large return in economic development from a relatively small investment.
Don't you feel this justifies continued federal support for Sea Grant?

Answer:

While we do not dispute report studies which have documented the effectiveness of the Sea Grant Program, the principal beneficiaries of Sea Grant-sponsored projects are state or local governments and private industry. We believe that these entities, not the general taxpayer, should and will support activities which warrant continuation.

Question:

Three years after several foreigners died after eating American canned fish, the Administration is proposing to virtually eliminate the inspection program.

Considering that fish products continue to be a major contributor to our trade deficit, do you consider this to be a wise policy?

Answer:

There is no reduction proposed in the FY 1985 budget for the inspection program. The reduction proposed involves funds designed to partially offset indirect program costs previously charged to industry as part of the inspection fee. These funds were provided by a Senate add-on in the FY 1984 appropriation and were not requested by the Administration. It is the Administration's policy that industry should pay the full cost, direct and indirect, of the inspection service. That policy is the basis for the proposed reduction of the $700K add-on. The reduction will not reduce NOAA's ability to provide for the inspection of U.S. seafood products.

Question:

If NOAA is not considering transferring the Fisheries Industry Information Program to the private sector, are there sufficient funds in the agency's proposed budget for the necessary data collection and economic analyses that are so important to the fishing industry?

What would happen to the cost of these reports if they are handled by the private sector?

Answer:

Yes, sufficient funds, (i.e. $6.9 million), would be available to support data collection and analysis necessary to support current management plans. The proposed decrease does not affect the market news program since it is not included in the $3 million reduction proposal. In FY 1983 and 1984, the market news program was not funded by Congress. Congressional guidance was to continue the program in FY 1984 within existing appropriation levels. This program is scheduled to terminate at the end of FY 1984 since it is a function that is more appropriate for industry to implement. We are continuing to explore alternatives to the current system but have not completed our evaluation. Since existing fees cover 14% of Government cost, the subscription rate can be expected to increase when the reports are produced by the private sector.

Question:

From an economic standpoint, production increases for commercially important species of shellfish due to aquaculture research overshadows the annual research budget. The tremendous potential of aquaculture programs to help solve world food problems would seem to warrant continued high-priority research and development.

Please comment on NOAA's termination of this program.

Answer:

Basic Federal research in aquaculture has provided the necessary baseline information for industry to make investment decisions. Further direct Federal programs in support of aquaculture development are an inappropriate Federal role since industry has and will continue to fund these types of research projects when their risk analysis indicates that sufficient economic gains can be achieved from an investment in aquaculture. NOAA will continue to participate in inter-deparmental coordination of policy with the Departments of Agriculture and Interior.

The NOAA aquaculture program was never intended as a program to address the problem of world hunger. Other nations may conduct aquaculture research for purposes of increasing food supplies. In those cases, United States foreign aid programs would be a proper vehicle to consider support for their efforts.

Question:

Research in fisheries habitat is vital towards understanding the interaction of marine fish populations with the environment. As we continue to radically alter (and in many cases destroy) the habitats of our marine resource stocks, up-to-date research and monitoring of specific areas must be maintained to assess the impact of man's activities. Commercial fisheries and government agencies need this information to implement fisheries management plans. NOAA suggests focusing its resources on high priority areas only.

Has our knowledge of such complex systems reached the point where we can designate lower priority Environmental Assessment work?

What and where are the "high priority" areas?

Answer:

Environmental assessment work is a very important part of NOAA's efforts to conserve and manage living marine resources. However, the current Federal budget deficit problems point to a greater need to restrict Federal spending. Many difficult choices have been necessitated by this circumstance. Among those was recognition that limited cut-backs in environmental assessment work would not adversely affect the ability of NOAA to fulfill its conservation and management responsibilities. The new habitat policy to include qualitative and quantitative habitat information in the decision process will continue to focus on the most important fisheries and is not adversely impacted by this reduction.

Question:

Under the Anadromous Fish Conservatition Act, NOAA shares responsibility for programs to conserve, develop, and enhance anadromous fish resources.

How does NOAA intend to fulfill this obligation when the anadromous fisheries grant program is slated for termination?

What is the current status of the stocks of anadromous species such as salmon, striped bass, etc...?

Answer:

Since much of the research conducted under P.L. 89-304 involves fisheries occurring primarily within internal waters and the territorial sea (i.e., state waters), it is more appropriate for the states to fund this type of research. Most benefits accrue to a local region rather than on a national basis.

Many of the anadromous stocks such as salmon and striped bass are currently seriously depressed. NMFS has been petitioned to placed striped bass on the endangered species list and the Pacific Salmon catch in 1982 and 1983 was lower than previous years. NMFS and the Fish and Wildlife Service, working with and through the states, have completed a three year study on striped bass. Now it's time for each state to enact regulations to address striped bass problems. NMFS will continue to conduct salmon research in the Pacific Northwest to aid in the restoration of those stocks. Fishery management is based on a mixture of state, Federal and international efforts to coalesce knowledge and data into overall strategies utilizing the best available information, with all partners contributing their appropriate share to the support of these efforts.

Question:

Regional Fishery Management Council funding is proposed to be reduced by 40% (-$4M) in FY 1985 on the basis that a shift is needed from plan development to plan implementation.

With 5 management plans in FY 1984 and 3 in FY 1985 being planned for development by the Councils, along with 40 - 80 existing plans needing management, how can this reduction be justified?

Answer:

Most plans in the "pipeline" or already in place will be unaffected by the proposed reduction. Most major fisheries within the Fishing Conservation Zone are already under management or soon will be. We expect the remaining Council program will continue to provide Fishery Management Plans (FMPs) and amendments, as necessary, to fulfill the intent of the Magnuson Act for the highest priority fisheries of the United States. By the end of FY 1985 we expect to have in place 34 of the approximately 40 FMP's that we estimate will be eventually developed. The $3,200,000 remaining in Council funding will address these additional plans and amendments to existing plans.

Question:

I am surprised at NOAA's continued failure to support a 2-polar orbiter system after Congress has appropriated money for the program year after year.

Why is the administration reluctant to endorse this program?

Answer:

The major reason to recommend a one-satellite polar orbiting system is to save money without substantially degrading the quality of weather forecasts. Savings of over $700,000,000 are expected in the period from 1985-1995.

Question:

Have all of the funds appropriated for the 2-polar system been used for that purpose?

Answer:

All funding appropriated by Congress has been used to continue the procurements of polar orbiting spacecraft. Most of the funding provided to maintain a two-polar system was used to include the NOAA-JX spacecraft with the NOAA H & I contract. This spacecraft will be utilized whether we are in a single or dual spacecraft mode. An additional $4,000,000 is being applied toward the development of the next generation of polar satellites. Not all the funding provided for polar-orbiting spacecraft in 1984 is required for that purpose. A total of $1.2 million was saved in negotiations on contracts and is available for other uses.

Question:

Has there been any carryover of these funds? (If there are carryover funds, have they been shifted to other projects?)

Answer:

There has been no carryover of these funds; however, $1.2 million will used to forward-fund 1985 NASA polar-orbiter requirements if not used for another purpose this year because of the savings described above.

Question:

The proposed reductions for NOAA's Ocean and Coastal Programs and Fisheries Research Programs total more than $120 million. Such severe reductions for programs that were, in my opinion, not adequately funded to begin with is appalling.

How can we wisely utilize and manage the valuable resources in our waters when research and development funding for the nation's major civilian ocean agency has been so drastically reduced?

Answer:

The recent establishment of a 200-mile U.S. Exclusive Economic Zone (EEZ) was an important step that needed to be taken to protect our nation's ocean and coastal resources. We intend to manage these resources wisely and to the economic benefit of the U.S. Efforts are currently underway to conduct a full survey of the EEZ area and to identify potential resources and the problems associated with their development. NOAA's proposed FY 1985 budget adequately funds these research activities. In FY 1985, the budget proposes over $100 million in support of ocean and coastal program activities and over $90 million in support of fisheries and management activities. The programs which have been proposed for termination or elimination in the oceans and fisheries area are of lower priority or represent activities which are more appropriately funded by the states or by private industry.

Question:

The Administration proposes to increase overall federal R&D funding by 14% from FY 1984 to FY 1985. For example, EPA and the National Science Foundation's R&D budgets, which focus on the same types of environmental and natural science research that NOAA performs, are being enhanced by 14 and 12 percent, respectively. NOAA's R&D budget, however, is being cut by 38%.

How can this cut be justified when you consider that NOAA has R&D responsibilities over areas of such potential importance?

Answer:

The President's FY 1985 budget for NOAA does contain funding for oceanic and atmospheric research to meet high priority national needs. For example, NOAA will remain a key participant in the national acid rain research program and will continue meteorological research directed at improving weather forecasts and warnings. The majority of proposed R&D reductions involve programs which have fulfilled their original objectives or are more appropriately supported by the privatre or state concerns who benefit from their results.

NOAA

General

Question:

The President's FY 1985 budget identified NOAA's requirement as $921.450 million. However, the President's appropriation request, which assumes financing of $118.54M from other sources, is for $802.909M.

If this other financing is not available, as it has not been in past years, how will NOAA make up the difference?

Answer:

Financing from three of the four sources proposed in the FY 1985 budget were included in NOAA's FY 1984 Appropriation Act. These involve the Saltonstall-Kennedy Fund, Airport and Airway Trust Fund and the Coastal Energy Impact Fund. We would hope that the Congress would accept our FY 1985 proposal to use these same sources to offset the NOAA appropriation given the deficit problem that everyone is faced with. The fourth proposed financing offset involves the transfer from the Fisheries Loan Fund (foreign fishing fees collected) to offset the costs of carrying out the Magnuson Fishery Conservation and Management Act (MFCMA). We believe this is the most appropriate use of these funds and is consistent with the original intent of the MFCMA since the Foreign Fishing Fees are based on MFCMA costs.

In the absence of these effects we would recommend an appropriation that supports the program level proposed in the FY 1985 budget.

Question:

What level of funding above last year's appropriation is needed in FY 1985 to allow programs to continue at last year's levels of activity? That is, continuing the two-polar orbiters and adjusting for inflation, pay increases, etc.

Answer:

The Department will provide a detailed breakout of amounts needed to carryout NOAA programs in 1985 at the 1984 level based on a complete set of assumptions provided by the Committee. The increased amount to continue the same program level in 1985 as in 1984 is $55,129,000. This amount represents only satellite costs changes and includes no inflation. The President's current service estimates for NOAA in 1984 is $1,053,639 and in 1985 is $1,162,144, an increase of $108,505 in budget authority. These estimates include inflation. Neither set of numbers reflect any assumed actions on financing proposals in the 1985 budget.

The President's FY 1985 budget contains pay raise and inflation requirements for the proposed level of programs Using the request as a starting point, the number can be adjusted up or down, using the program increments/decrements in the budget. The changes required for pay raise or changes in program activity will be supplied accordingly.

Question:

a. How much of the proposed FY 1985 ORF decreases were also proposed in FY 1984 and FY 1983?

Answer:

The FY 1985 ORF program decreases are the same as the FY 1984 ORF program decreases plus the amounts added to the FY 1984 appropriation. The same is generally true when comparing the FY 1983 program cuts with those proposed for FY 1985. The total amount of decreases proposed is also affected by the amount of financing available and management savings identified. A table listing each decrease requested in FY 1983, FY 1984 and FY 1985 will be provided the Committee shortly.

Question:

b. How many of these decreases have been allowed by Congress?

Answer:

None of the proposed FY 1985 decreases were accepted by Congress in FY 1983 or FY 1984. However, some of the decreases proposed in FY 1983 and FY 1984 have been accepted by Congress.

Question:

NOAA has stated over the last several years that the proposed budget has anticipated that alternative funding sources such as industry or state and local governments would replace federal funding for many NOAA programs such as Sea Grant, GLERL, Fish Hatcheries, and Agriculture, Fire and Fruit Frost Weather Programs.

What evidence does NOAA have to show that if these programs do not get federal support alternative sources would become available?

Answer:

We believe that those programs that are truly important to local entities and the private sector will receive the needed support. For example, private meteorologists are already providing services to agricultural interests in many parts of the country. Further, we believe there are other competent meteorologists available in the private sector who either are or easily could be trained to provide the required services. NOAA believes that once the Federal Government's free services are eliminated, normal economic motivations will operate and result in the private sector assuming, quite vigorously, the services now provided by NOAA. Likewise, in the case of forest and wildlands management programs, NOAA assumes that the Federal and state agencies now being served will acquire equivalent services, either through the use of private services or by hiring their own meteorologists.

Question:

Under the conditions of a governmental effort to reduce the number of GS 11-15 employees, is NOAA concerned that the number of its highly qualified and dedicated managers and scientists may look elsewhere for better employment opportunities?

Answer:

No. We expect no change in the quality of our researchers or managers.

Question:

In NOAA's FY 1985 budget, a proposed transfer to ORF of approximately $118Mis to be taken from S-K funds ($38.6M), FLF ($44.941M,), CEIF ($8M), and the Airport and Airway trust fund ($27M).

a. As you know, these transfers require authorizing legislation. What is the status of this legislation?

Answer:

Only the financing offsets from the Saltonstall-Kennedy Fund ($38,600,00) and the Fisheries Loan Fund ($44,941,000) require legislative changes. However, even without legislative change, Congress approved transfer of $23,600,000 from S-K to ORF in 1984. Legislation has been submitted to the Congress for both of these changes. Legislation is not required for the transfers from the Coastal Energy Impact Fund ($8,000,000) and the Airport and Airway Trust Fund ($27,000,000).

Question:

b. What are the programs that depend on S-K monies, and how much did they receive from the fund in FY 1983 and FY 1984?

Answer:

These are two programs that depend on S-K funding. First, under the fisheries development line item in the ORF account, are the NOAA in-house development activities which were funded in FY 1983 and FY 1984 for $10.3 million and $11.0 million respectively and offset by a transfer from the S-K account. Second, under the S-K account, industry assistance grants were provided in FY 1983 and FY 1984 for $8 million and $10 million respectively.

Question:

c. How will NOAA provide for programs that need S-K funds for support?

Answer:

The NOAA program requirements for the fisheries development line item in the budget will be funded through the ORF appropriation as offset by the S-K transfer. Industry assistance (S-K grants) will not be provided since the entire amount of S-K receipts will be transferred to offset ORF. NOAA believes that industry should fund the administrative and research grant activities of the Fishery Development Foundations.

Reprogramming

Question:

Does NOAA have any expected shortfalls in the FY 1984 budget in addition to those for which you have submitted a reprogramming request?

Please provide a list of these shortfalls, an explanation as to why insufficient funds exist, and a synopsis of how NOAA plans to cover them.

Answer:

NOAA has submitted no other reprogrammings for FY 84 shortfalls. We are currently preparing a notification of a relocation and contracting-out resulting from an A-76 study. NOAA will be reviewing the effect of the proposed AT&T long line rate increase. This may require a reprogramming to cover cost increases.

Question:

Did NOAA submit a FY 1984 supplemental to the Department of Commerce to cover its pay increases and related shortfalls?

If yes, what was the DOC's response to your request?

Answer:

The Department identified, as part of the fall budget review at OMB, the amounts needed to cover the costs of the FY 1984 payraise.

A-76

Question:

What is NOAA's estimate of cost savings if certain functions are contracted out under the A-76 provisions?

Please give a breakdown of the estimated yearly savings by program.

Answer:

The attached two tables respond to this question and the following question on NOAA's A-76 program.

The estimated savings (management efficiencies) from A-76 studies identified to date are shown in column three of the attached table number one. Future estimated savings are shown in column six. Table two shows the budget line item/program where the savings will occur. The consultant costs for A-76 studies are shown in columns two and five of table one and table two shows the in-house cost associated with each A-76 study.

Question:

What has the cost been for the A-76 studies?

Please give contract costs and cost estimates of NOAA's contribution to these studies.

Answer:

Please refer to previous question and the attached tables for the answer to this question.

Program Support

Question:

With NOAA laying up its fisheries ships and contracting research cruises out to charter, can we be assured of the same high quality data NOAA had produced in the past?

Additionally, what assurances does NOAA have that it can charter in all regions of the country?

Answer:

Yes; it is expected that the same high quality data will be produced by NOAA. Highest priority resource survey activities would be continued, either with NOAA fleet vessels, operated with charter funds if more cost-effective, or private sector charter vessels. The exact mix has not been determined. It is expected that NOAA will be able to fulfill its high priority information needs in all regions of the country.

Question:

NOAA ships and equipment offer unique, highly technical opportunities to collect data; in many cases they provide research capabilities other ships cannot.

Will the same type of studies be continued or will contracting out services limit the type of research performed?

Answer:

Types of research performed depend on the availability of research vessels with definite characteristics. In those instances where NOAA fleet vessels are needed because of their unique capability, appropriate cost-effective arrangements using charter funds would be made. It is not expected, at this time, that contracting out service will limit the types of high priority research performed.

Question:

Much of the value of scientific data depends on using consistent methods of data collection. If equipment, timing, or methods are altered during an investigation, variability may be introduced that will make the data non-comparable and therefore useless.

What assurance does NOAA have that data collected under various chartered services will be comparable?

Answer:

NOAA introduces new data collection methods and equipment continuously over time. Data collection, timing and vessels can vary from year to year. Marine fisheries data collection, in particular, is not an exact science and the data collected is not made useless by the changes as long as NMFS oversees the changes when made.

NOAA will make every effort to ensure that data collected under various chartered services will be comparable. In those instances where NOAA fleet vessels have unique capabilities, NOAA retains the option to utilize charter funds to operate fleet vessels if cost-effective. This should minimize the likelihood of using inconsistent methods of data collection.

Question:

I am aghast that NOAA is considering laying-up the SURVEYOR along with other vessels. The SURVEYOR is the only ship to do marine mammal work in Alaska, and the only one outfitted with Sea Beam for polymetallic and other survey work.

What will happen to the research that the SURVEYOR performs?

Answer:

The goals and objectives of NOAA programs will not be adversely affected by this reduction. Ship support will continue to be provided without interruption to the highest priority NOAA projects.

Question:

Many of the programs have been so drastically cut that they can only maintain minimal administrative support.

Data collection funds and ship support have either been radically reduced or terminated altogether.

How is NOAA meeting its legislatively mandated mission when the agency is too crippled to perform?

Answer:

In FY 1985, the NOAA Fleet will continue to conduct operations that support the highest priority NOAA projects in nautical charting, marine environmental baseline assessment, oceanographic and atmospheric research, coastal ocean circulation, deep-ocean mineral site assessment, fisheries research, and resource assessment. The NOAA Fleet wll be reduced from 4,314 days-at-sea (DAS) to 2,160 DAS in FY 1985. Charter support will provide an additional 1074 DAS in FY 1985. Program support will be provided as follows:

NAUTICAL CHARTING - 1,440 DAS

Class	Atlantic Marine Center		Class	Pacific Marine Center	
II	MT. MITCHELL	180 DAS	II	FAIRWEATHER	180 DAS
III	PEIRCE	180 DAS	II	RANIER	180 DAS
III	WHITING	180 DAS	III	DAVIDSON	180 DAS
V	RUDE/HECK	360 DAS			

OCEANIC AND ATMOSPHERIC RESEARCH - 270 DAS

Class	Atlantic Marine Center		Class	Pacific Marine Center	
I	RESEARCHER	180 DAS	I	DISCOVERER*	90 DAS

OCEANOGRAPHY AND MARINE SERVICES - 390 DAS

Class	Atlantic Marine Center		Class	Pacific Marine Center	
	None		I	DISCOVERER*	90 DAS
			III	McARTHUR	180 DAS
			II	MILLER FREEMAN*	120DAS

FISHERIES RESEARCH AND ASSESSMENT - 60 DAS

Class	Atlantic Marine Center		Class	Pacific Marine Center	
	None		II	MILLER FREEMAN*	60DAS

*MILLER FREEMAN & DISCOVERER are shared by two programs.

Question:

Similarly, items such as general administrative savings (including field = $5.6M) and reduction of ship support and days at sea ($10.2M combined) are leading to the erosion of the infrastructure that supports NOAA'S programs. Programs are being sent to other agencies because the base that enables NOAA to do them is being wiped out.

How can NOAA justify such drastic cuts to its very foundation?

Answer:

The goals and objectives of NOAA programs will not be adversely affected by these reductions. The reductions in general administration are associated with NOAA-wide overhead. NOAA is proposing actions in FY 1985 which are intended to effect cost savings by streamlining administrative functions which are duplicative of services provided by the Regional Administrative Support Centers and headquarters staff. NOAA will also achieve savings by providing ships to fisheries programs through the chartering of commercial vessels, and by reducing the number of days at sea for other programs which no longer need or require the existing level of support now provided to them by our ships. Ship support will continue to be provided without interruption to the highest priority NOAA projects.

Question:

Once again the NOAA undersea research program is slated for termination. The Administration's rationale for this is that the programs are not central to its basic mission and are primarily of state and regional concern. Manned undersea research is crucial to meet the nation's responsibilities of investigating deep sea metals, oil and gas drilling areas, fishery habitats and behavior, and ocean pollution problems. To adequately cover these areas an ongoing undersea research program must be assured of continued funding to maintain and develop our nation's ability to explore and manage the oceans.

Given these national concerns, why does NOAA propose zero funding for NURP?

Answer:

Although NURP programs may have some component of national scope, the Administration evaluates them on balance as predominately of state and regional concern. Accordingly, they should be funded from private and state resources. Where Federal programs use these facilities, such as the ALVIN, the specific program can fund the facility directly.

Question:

The Galveston, Texas Laboratory has played a vital role in refining and testing experimental techniques for aiding the endangered Kemp's ridley sea turtle.

With the closure of that lab, along with a $530,000 reduction in protected species biology for turtle research, who will continue the studies essential to the sea turtle's recovery?

Answer:

Approximately $280K will remain in the base program of NOAA's Southeast Fisheries Center for turtle research in FY 1985 under the proposed budget. Greater reliance will need to be placed on non Federal opportunities to conduct other than the highest priority research on sea turtles. Expertise to conduct needed studies would be available from state agencies, universities, and private sector entities.

Question:

The proposed cuts for Ocean and Coastal Programs and Marine Fishery Resource Programs total over $120M, which is about $41M more than FY 1984. Last year's restorations and enhancements have been completely eliminated.

With such drastic reductions how can NOAA possibly initiate and continue research crucial towards understanding and solving important marine problems?

Answer:

New reductions beyond what was proposed in FY 1984 are not proposed in 1985. The increased size of the reductions reflects dropping congressional add-ons, principally in CZM grants, and financing from other sources. It does no result from new cuts in research.

Most of the research carried out by NOAA's programs had been directed toward a fundamental understanding of oceanic processes and the mechanisms of pollutant effect on marine ecosystems, i.e., basic research. While some of this research could produce benefits in the long-run, it is expensive and produces few short-run benefits. We plan to redirect our research programs toward the current needs of ocean resource managers. This program redirection implies a focusing of NOAA's dollars and manpower on problems of national importance, such as ocean waste disposal. It will also include a new focus on national assessments, rather than site-specific issues, and on the synthesis of available information for decisionmaking purposes. We think we can effectively implement this redirection with fewer resources than in the past.

Question:

a. Will the proposed termination of the Great Lakes Environmental Research Laboratory result in any loss of services or research that are NOAA's responsibility to provide?

Answer:

We believe that the majority of research and services conducted at the Great Lakes Environmental Research Laboratory address largely state and regional needs and are the responsibility of those state governments and private enterprises which receive the benefits of these activities. Work of critical national concern will be continued in other NOAA labs.

Question:

b. Do you have any assurances that with the closure of this lab the U.S. will be able to meet its treaty obligations with Canada?

Answer:

The principal bilateral agreement between the U.S. and Canada for Great Lakes water quality and pollution research is the U.S./Canadian Water Quality Agreement of 1978. EPA is the lead agency for U.S. participation under this agreement and will continue most of the work of its Great Lakes National Program Office. Similarly, the Department of Interior will continue its fisheries laboratory in the Great Lakes. In addition, a number of universities in the area presently have Great Lakes programs which will contribute to research on pollution and other problems in the Great Lakes.

Question:

The President's State of the Union message stressed the importance of continued research and monitoring efforts into Chesapeake Bay.

As the Nation's leading civilian oceans agency, why isn't NOAA playing a central role in these investigations?

Answer:

The $300,000 appropriated in FY 1984, as well as the $250,000 appropriated in FY 1983, are being used to assist local jurisdictions in establishing pollution monitoring programs for the Chesapeake Bay area. This assistance was requested by the local jurisdition on a short-term basis. Since the programs are now established, and since the pollution problems in the Chesapeake Bay are addressed in the President's proposal to provide the Environmental Protection Agency with a FY 1985 budget increase of $40,000,000 for efforts necessary to clean up the Bay, these funds are no longer necessary.

Question:

Coastal states are currently running a budget deficit. With a cut of over $23M in coastal zone management programs, including a $21M reduction for the states assistance programs, can coastal states realistically be expected to pick up full responsibility for CZM?

Answer:

Yes. We believe that most states value these activities and will continue their programs. States generally perceive coastal management to be of value for the improved decisions that resolve the conflicting uses of the coast. Most states (28 out of 35) have adopted approved programs or are developing their programs in order to better manage their important coastal resources. The non-approved states also do coastal management activities. We believe that most states will seek to maintain Federal approval and that the other states will continue coastal management activities even without Federal approval because of its value to their resource management and citizens. The Federal commitment under CZMA has been met, and indefinite support of state programs was not envisioned by the Act.

Question:

Have all the states that are interested in developing a management plan been able to participate in the CZM program?

Answer:

NOAA is ready and willing to assist any state in developing a management program. All 35 eligible states and territories have received Federal funds to develop CZM programs.

Question:

There is currently massive destruction of estuaries every year. Their value to coastal and offshore fisheries is immeasurable. This year the Administration proposes deferring funds for the acquisition of additional sites until a review of existing sites has been completed.

What impact (or relevance) does this have on preserving the estuaries that have not yet been purchased?

Answer:

Assuming resumption of designations in FY 1986, the deferral of acquistion and designation of a new site in FY'85 will have overall impact on preserving estuarine areas. Designations will occur in late FY'84 and one acquisition award could be released in early FY'86 if preacquisition planning continues throughout FY'85. The pause in designations will allow the program to clear up problems with existing designations.

Question:

Considering the coastal states are running a deficit it seems unreasonable to expect them to replace funding cuts made by the Federal Government. Please comment.

Answer:

At the end of FY 1983, 16 states/territories had received five years or more of funding to implement their approved programs. Most states realize the importance of the Coastal Zone Management Program and will continue coastal management activities, even without Federal funds, because of its value. Furthermore, the states' have known since FY 1982 of the phase-out of Federal assistance.

Question:

In 1980, P.L. 96-294 created the Interagency Task Force on Acid Precipitation. That Task Force has conducted public reviews of the National Acid Precipitation Assessment Program, in Raleigh, North Carolina in February, 1983 in Boston, Massachusetts in August, 1983, and in Burlington, Vermont in February, 1984.

On the basis of these reviews and other considerations, has the Task Force made any general or specific recommendations to OMB about the FY 1985 funding of the National Acid Precipitation Assessment Program? If so, what are these recommendations in their entirety? Please provide any documentation.

Answer:

NOAA requested, and the Task Force agreed to, an FY 1985 funding level of $82,360,000. This is the level requested in the President's budget. Further questions should be posed directly to the Interagency Task Force on Acid Precipitation.

Question:

Research in fisheries habitats is vital towards understanding the interaction of marine fish populations with the environment. As we continue to radically alter (and in many cases destroy) the habitats of our marine resource stocks, up-to-date research and monitoring of specific areas must be maintained to assess the impact of man's activities. Commercial fisheries and government agencies need this information to implement fisheries management plans. NOAA suggests focusing its resources on high priority areas only.

Has our knowledge of such complex systems reached the point where we can designate lower priority environmental assessment work?

What and where are the "high priority" areas?

Answer:

Environmental assessment work is a very important part of NOAA's effort to conserve and manage living marine resources. However, the current Federal budget deficit problems point to a greater need to restrict Federal spending. Many difficult choices have been necessitated by this circumstance. Among those was recognition that limited cut-backs in environmental assessment work would not adversely affect the ability of NOAA to fulfill its conservation and management responsibilities in the short term. It was also felt that our state and private sector partners in environmental research would recognize their high priority needs and assume responsibility to assist in filling some of the short-term gaps. Habitat concerns in the northeast and northwest represent the highest priority environmental assessment areas under the proposed budget.

Question:

In 1980 striped bass were found to provide a net economic value of $11.5M. There is, however, a 40% annual mortality rate on coastal migratory stocks which threatens population levels. Unless research on striped bass is continued and measures are imposed to protect stock levels, we will lose a valuable recreational and economic resource.

Again I ask, how can NOAA justify terminating the $3.2M grant program when these and other valuable living marine resources are threatened?

Answer:

Research on the striped bass situation has been conducted for four years. A draft copy of the report describing some of the research results is attached. Since much of the research, such as striped bass, conducted under P.L. 89-304, involves fisheries occurring primarily within internal waters and the territorial sea (i.e., state waters), it is more appropriate for the states to fund this type of research. Most benefits accrue to a local region rather than on a national basis. Fishery management is based on a mix of state, Federal, and international efforts to coalesce knowledge and data into overall strategies utilizing the best available information. NOAA will continue to conduct research and provide scientific data to the eight Regional Fishery Management Councils to support the conservation and management of the living marine resources under the jurisdiction of the Federal Government.

Question:

Sea Grant programs provide information which is broadly based and serves the national interest. Furthermore, the states provide matching funds for this research, in some cases over 50% of the program funds.

How does NOAA justify terminating a program where the national interests are served, and the Federal Government has been able to share the costs?

Answer:

Although in some cases Sea Grant activities may address national research needs, the economic benefits accrue mainly to state economies and local industries. Thus, the support of the program by the primary beneficiaries is appropriate.

Question:

Considering the coastal states ran a combined deficit of $4.7 billion in 1983, it seems unreasonable to expect them to replace funding cuts made by the Federal Government. Please comment.

Answer:

We believe that the general economic climate is improving steadily and that the states that are having economic difficulties now will be better able to meet needs such as this in FY 1985.

Question:

Why terminate Sea Grant when the Land-Grant program, after which it was modeled, is being expanded?

Don't your justifications for terminating Sea Grant also apply to the Land-Grant program?

Answer:

The Administration will continue to support those activities of the Department of Agriculture's traditional Land Grant program which provide support for basic research to increase our fundamental knowledge in the plant and animal sciences. At the same time, however, the Administration is proposing reductions in some aspects of the Agriculture research program. For example, funding for special research grants will be decreased because states are in the best position to determine whether research should continue in specific problem areas. Similarly, formula grants for animal health and disease research will be terminated since the FY 1985 budget contains other funding mechanisms like competitive grants, which will more effectively target federal funds to reasearch issues in this field which are of major national concern. In the case of Agriculture's Extension Services, the FY 1985 budget reflects the Government-wide policy to terminate federal funding for programs that have fulfilled their purpose.

Like some of Agriculture's Extension Service programs, the National Sea Grant College Program has fulfilled its original goal of establishing a network of institutions with strong interdisciplinary programs in marine science and education. The research conducted at these institutions largely addresses issues of regional concerns and State and local governments, as well as private industry, should now step in to support these Sea Grant activities which meet their needs. Meanwhile NOAA and other Federal agencies will continue to conduct research on ocean related issues which are of critical national concern, rather than regional or local.

Question:

Much of Sea Grant's research is intended for broad applications. Industries tend to fund projects which address their own specific needs. If industry was to increase its funding for Sea Grant, and NOAA's involvement was terminated, many research activities important to smaller companies and state, regional, and Federal agencies would be sharply reduced or even eliminated. Please comment.

Answer:

Many of these organizations that are incapable of funding their own R&D share problems in common with one another and with larger companies. The generic type of research supported by Sea Grant could be jointly funded by these organizations.

Question:

In 1982, salmon comprised 48% of the edible fish products exported from the U.S. With the proposed termination of the aquaculture program, would NOAA perform any salmonid aquaculture activities?

Answer:

Under the budget proposal, NOAA will continue to coordinate with the Departments of the Interior and Agriculture on aquaculture issues. NOAA's direct aquaculture program will be terminated. We believe that the termination of NOAA's aquaculture research will not impact the long-term growth and development of the aquaculture industry. NOAA will continue basic salmon research activities in the northwest which may make some indirect contribution to salmonid aquaculture activities. The FY 1985 budget provides $742,000 to conduct salmon research in the Columbia River.

Question:

During 1983, shrimp represented over 30% of the total edible fish products imported into the U.S. Their economic worth was valued at $1.2 billion.

With the closure of the Galveston, Texas laboratory, what NOAA facilities are available for shrimp management and aquaculture research in the Southeast?

Answer:

NOAA's Southeast Fisheries Center operates laboratories in Pascagoula, Mississippi, and Miami, Florida, capable of carrying out high priority shrimp management research. The Center cooperates extensively with the states, universities, and private sector entities in this endeavor. NOAA will not, however, maintain any direct involvement in aquaculture research and development activities under the proposed FY 1985 budget.

Question:

NOAA's aquaculture program at Milford, Connecticut is crucial to the development of molluscan aquaculture in the Northeast, yet the program is slated for termination.

Have any new sources of funds which would allow this important research to continue been found?

Answer:

NOAA will continue to participate in inter-Departmental coordination of aquaculture policy with the Departments of Agriculture and the Interior. A direct NOAA program in support of aquaculture development is an inappropriate Federal role since industry has and will continue to fund these types of research projects when their risk/return analyses indicate that sufficient economic gains can be achieved from an investment in aquaculture.

Question:

A decrease of $3 million is proposed for the Fisheries Industry Information Program. This program provides the U.S. fishing industry with valuable information on the commercial and recreational fisheries harvest. Last year at this time a source in the private sector had not been found to continue this service.

Is NOAA still considering transferring the publication and distribution of market news to the private sector?

Answer:

Yes. The market news program is scheduled to terminate at the end of FY 1984 since it is a function more appropriate for the private sector.The market news program was not specifically funded by Congress in FY 1983 and FY 1984. We are operating in FY 1984 under the guidance from Congress to continue the program within the current appropriation level. We are continuing to explore alternatives to the current market news publication and distribution system.

Question:

Industry depends on NOAA to provide fisheries development research and services. Industry concerns, however, are fragmented, and their ability to contribute to other fishing industries is questionable.

If NOAA reduces these development programs will industry be able to adequately cover the wide range of R&D needed to maintain product quality, safety and marketing techniques?

Answer:

The net effect of these proposed changes is a realigment of Federal budget resources based on a perception of the complementary roles of industry and government in general fisheries development. After the proposed changes are completed, we expect solid long-term growth of the fisheries resources to be restored as well as the potential for industry to be a "growth" industry. The potential for industry will be unchanged. However, the industry will have the responsibility to take the lead in achieving full utilization of marine fishery resources available for U.S. exploitation.

Question:

What would NOAA's involvement be in fisheries research and development if all grants to states under the Commercial Fisheries Research and Development Act were terminated?

Answer:

NOAA would continue the highest priority research and development activities in support of its mission to conserve and manage living marine resources for the benefit of the Nation. NOAA would continue to work with its state, university, industry, and other private sector partners in carrying out its mission.

Question:

How can there be "no substantial degradation" in the quality of weather forecasts when the transfer to a one-polar system might involve the loss of all polar coverage in the event of a launch or early operational failure?

Answer:

The statement that no substantial degradation will occur in the quality of weather forecasts is applied to the entire period. Should the unlikely event of loss of all coverage occur, there would be a period of degraded weather forecasts. However, the likelihood of service discontinuity is believed to be low. The Atlas launch vehicle has a success rate of approximately 90%; one NOAA satellite (B) failed to achieve useful orbit. Premature failure, though always a possibility for a number of reasons, is less likely for a mature design such as the TIROS/NOAA satellite system than for a new series such as GOES D (the first of the series procured from the Hughes Aircraft Company) or LANDSAT D. This is normally true because design deficiencies which are found in early satellites are corrected for downstream ones.

To guard against discontinuity, the one-polar orbiter program has been structured so that launches are scheduled in anticipation of failure. The design lifetime of the satellite is 20 months. The one satellite launch scenario takes this into account by scheduling a launch each 18 month whether the in-orbit satellite shows signs of degradation or not. It is planned therefore to have a satellite in orbit, checked out and ready for service at the completion of the predecessor satellite's design lifetime. In orbit, we have seen extended longevity from each of the already launched TIROS/NOAA satellites. Should we suffer a launch failure in the one polar system, it is hoped that the then in-orbit satellite will operate in the manner of NOAA 6, which was replaced after 3½ years in-orbit, and thus provide service through the period before the next satellite is ready for launch.

The use of a single satellite system does increase slightly the risk of the loss of data from NOAA's system. NOAA would be able to launch a replacement satellite within 120-150 days. If a loss of data were to occur, Hawaii, Alaska and the western states of the continental U.S. would be most vulnerable to less accurate forecasts since weather systems generally move from west to east in the Northern Hemisphere and these localities lie closest to the area where less operational data will be available. During this period, agricultural and climatalogical services would be degraded and search and rescue activities would need to revert to "conventional" reports and information received from the U.S.S.R. COSPAS system.

Question:

With a one-polar satellite system a replacement satellite must be launched every 18 months in anticipation of the need of the orbiting satellite's expected service life. However, with a two polar-satellite system a replacement need not be launched until one of the two orbiting satellites actually fails.

Considering this, aren't there possible long-term cost advantages to a two-polar satellite system?

Answer:

While it is true that a two-polar configuration allows greater flexibility in launching replacement satellites, it is highly unlikely that this flexibility would approach the level of savings gained by a one-polar system. The benefits gained by satellites surpassing their design lifetime would accrue to a one-polar system as well as to a two-polar system, though the actual launch schedules under a one-polar system would not be adjusted until allowed by "overlapping" spacecraft in orbit.

Question:

With a reduction of 42 positions and over $800K at eight Weather Service Forecast offices, how will NOAA adequately meet its forecast and warning responsibilities?

Answer:

The eight Weather Service Forecast Offices in the proposed reduction would continue to provide all of the warning, public weather, and marine weather services they now provide. We can reduce staffing by consolidating the preparation of aviation products of these Weather Service Forecast Offices with that of other Weather Service Forecast Offices and eliminating the staffing required for these avaiation duties. The aviation products themselves will continue to be available at all offices. Thus, this reduction produces substantial savings, while having virtually no impact on basic services.

Question:

Will effective local managerial and operational coverage be maintained if the four NWS regions are consolidated into three managerial areas of responsibility?

Answer:

Yes. Management activities and support functions of the Southern Region will be redistributed among the remaining three regions. There will be no change in the operational coverage. Operational functions such as public warning and forecast services, data collection services, and other weather informational services are provided by the Weather Service Forecast Offices and Weather Service Offices, not by the regional offices.

Question:

We understand there is restructuring activity underway at the National Weather Service yet, except for NEXRAD, there is no funding in the FY 1985 budget for improved technology. Recognizing the long lead time needed for developing and procuring new initiatives in the Weather Service budget, why is no new funding provided in FY 1985?

Answer:

In addition to the NEXRAD funding, the FY 1985 budget contains funding for Phase III of the NOAA Central Computer Facility Upgrade and the automation of Surface Observations (ASOS) program. The current DOC/NOAA/NWS Task Team is developing a comprehensive plan for NWS modernization and restructuring, including a thorough review of technology needs for the 1990's. It would be premature to request funds before the Team reaches its conclusions. The Team is fully aware of lead time considerations, however, and will make provisions for these in its funding recommendations.

Question:

Will the restructuring of the Weather Service take place without new technology?

Answer:

No.

Question:

Is the restructuring holding up the development of new technology in the Weather Service?

Answer:

We are continuing to support funding to develop technologies which we are certain must be part of NWS operations in the 1990's, such as NEXRAD and the Automation of Surface Observations (ASOS) program. We are also considering whether additional new systems are needed and expect to reach conclusions on these by this summer. In this sense, the restructuring should speed up development of any necessary new systems by clarifying the need for such systems within a comprehensive, well-planned blueprint for future NWS operations.

Question:

Last spring severe flooding occurred in many parts of the country, and predictions indicate widespread flooding again this year. Yet regional hydrologists, who assist with water management activities at the Regional level, are proposed for elimination.

Who will assume their water management functions?

Answer:

NWS management and coordination responsibilities for river and flood warning and forecast services will be assumed by the NWS regional meteorological staffs. The River Forecast Centers will be managed by NWS Headquarters. The proposed elimination does not target forecast and warning operations; rather, it is aimed at streamlining administrative and management activities.

Question:

Agriculture, fire weather, and fruit frost services are proposed for elimination or reduction in the FY 1985 budget because they are "specialized services" that can be provided by the private sector.

What is the difference between the forecasts NWS provides and what might be provided to these specialized user groups?

Answer:

The agricultural weather products and general fire weather products provided to local agricultural or forestry communities are derived from the warnings and forecasts issued to the general public. Site-specific weather warnings and forecasts are created to support fire fighting operations.

Under this budget proposal, NWS will continue to provide generalized public service weather forecasts to support agricultural operations. We anticipate a wide spectrum of services will be offered by private sector meteorologists that could include broadly-scaled forecasts, forecasts for specific commodity organizations, and as-needed forecasts and consulting services to alert customers to impending weather and its impact on their unique operations. NWS will continue to provide warnings and forecasts used to identify forest fire potential, and will continue our on-site mobile unit weather forecast support for very large, extremely dangerous wildfires. In the case of fire weather services for supporting general forest management activities, Federal and state agencies now being served can acquire equivalent services by contracting with the private sector or by hiring their own meteorolgists.

Question:

The National Weather Service's fire weather offices are crucial in providing forecasts and advisories for numerous meteorological services including prescribed burning, reforestation, insect control, and grassland preservation. NOAA's FY 1985 budget, however, proposes to eliminate the service in eight offices and reduce staff in others.

Since 80% of the lands served by this program are federal, how can NOAA expect other sources to pick up the costs?

Answer:

We expect the bulk of the funding to come from other Federal agencies, with state agencies providing the balance. Eliminating lower-priority NWS fire weather services should contribute to cost-effectiveness in this area across the Government. Responsibility for obtaining and funding their own fire weather services will motivate agencies to obtain only those services they need.

Question:

NOAA's statement about continuing advisory services for only very large, extremely dangerous wildfires disturbs me. Such conditions, by their very nature, can change radically over a short period of time.

For safety and management concerns, wouldn't it make more sense to provide advisory and forecast information before severe conditions occur?

Answer:

Our budget proposal will eliminate only those meteorological services that support general forest management activities, e.g., prescribed burning, reforestation, insect control and grassland preservation. We plan to continue advisory and forecast services in support of fighting wildfires. More specifically, we will continue to provide both advance information to help define the "potential" for dangerous wildfires and advisory information when one is actually occurring. We chose to concentrate our resources on providing services that are vital to the protection of human life and property.

Question:

Why is NOAA reducing its solar-terrestrial services and eliminating research when it is still uncertain that this program will or should be transferred to DOD or NASA?

Answer:

NOAA's overall budgetary requirements in FY 1985 do not allow for funding solar-terrestrial supporting research ($1.8M in FY 1985) and will result in a reduction in the level of services which we can provide without additional support from other user agencies. We are currently investigating the potential for transferring funding responsibility for SEL services and research to DOD and NASA. We believe these agencies should support SEL, as they are the main users of its services. Pending final agreement on a new funding strategy, we propose to phase out lower priority supporting research and reduce solar terrestrial services, in order to focus our resources on high priority agency needs. If DOD and NASA determine that they require continuation of these activities they should assume financial responsibility for providing them.

Question:

a. Won't the information critical to providing solar forecasts and warnings be severely lacking if services are reduced from 24 to 8 hours per day on weekdays only?

Answer:

The information will still be there. Data from the DOD global solar optical and radio observatories will still come to NOAA, 24 hours a day, seven days a week over DOD communication lines. Data from the space environment monitors on NOAA, DOD and NASA satellites will still arrive at the Space Environment Services Center 24 hours a day, seven days a week. However, personnel to process the information and issue alerts and forecasts will be available only eight hours a day, five days a week.

Question:

b. Do solar flares only happen on the weekdays?

Answer:

No. Solar flares can happen any time, any day.

Question:

How many agencies within the Department of Commerce requested and received a pay supplemental in FY 1984?

Answer:

The 1985 President's budget transmits the following proposed supplemental appropriations for pay increases for 1984:

Bureaus and Appropriations		Amt. Requested (in thousands)
General Administration	....	$ 516
Bureau of Census	....	700
Economic Development Administration	....	220
International Trade Administration	....	1,948
Minority Business Development Agency	....	205
Patent Trademark Office	....	1,200
National Bureau of Standards	....	1,659
National Telecommunications and Information Administration	....	100
Total, Pay Increase Supplemental	....	$ 6,548

Question:

Did NOAA receive one?

Answer:

No.

Question:

Has NOAA ever received a pay supplemental?

Answer:

Yes.

Table One (A)

	Study #	Activity	1983 & 1984 Action to Date (2/21/84) ① Phases	② Consultant Costs	③ Est. Mgt. Savings	1984 & 1985 Future Action ④ Phases	⑤ Consultant Costs	⑥ Est. Mgt. Savings	Totals ⑦ Cons. Costs	⑧ Est. Mgt. Savings	⑨ FTE	⑩ Budget	⑪ Subactivity/Line Item
1.	A001	NOAA Log.Sply.Ctr.	I,II,III	$53K(83)	$200K Act.	N/A	$0	$0	$53K	$200K	30	$950K	Exec.Dir. & Admin/Admin.
2	A004	MASC Library Svcs.	N/A	0	0	I,II,III	$20K(84)	$140K	$20K	$140K	18	$739K	Exec.Dir. & Admin/Admin.
3	A095	MASC Sply.Svcs.	N/A	0	0	I,II,III	$40K(84)	$142K	$40K	$142K	34	$710K	Exec.Dir. & Admin/Admin.
4	E002	NOAA Library	I,II,III	$66K(83)	$300K Act.	N/A	$0	$0	$66K	$300K	28	$1,000K	Data & Info.Svcs/Research & Info Svcs
5	E003	NODC ADP Ops.	I,II,III	$62K(83)	$250K Act.	N/A	$0	$0	$62K	$250K	22	$1,000K	Data & Info.Svcs/Ocean Data Svcs.
6	N008	Geod.Resources Mgt.	N/A	$0	$0	I,II,III	$50K(84)	$1550K	$50K	$1,550K	244	$10,300K	Map,Chart,&Geod.Prog/Geod.Ref.Syst.
7	R001	GFDL Comp. Ops.	N/A	$0	$0	I,II,III	$75K(84)	$80K	$75K	$80K	16	$400K	Atmos.&Hydro Research/Meteor.Resera
8	W001	NWS Engineering Act.	I	$225K(84)	$0	II,III	$75K(84)	$3000K	$300K	$3,000K	214	$14,521K	Pub. Warn.& Fore.Svcs/Maint.&Repair
9	W004	Test & Eval. Div.	I,II	$71K(84)	$0	III	$25K(84)	$320K	$96K	$320K	39	$1,627K	Pub. Warn.& Fore.Svcs/Observations
10	W005	Weather Chart Repr.	I,II	$0	$50K Act.	III	$0	$0	$0	$50K	13	$535K	Pub. Warn.& Fore.Svcs/Nat.Pred.Ctrs
11.	W007	Comm. Ops. Br.	I,II	$53K(83)	$130K Act.	III	$20K(84)	$0	$73K	$130K	49	$1,300K	Pub. Warn.& Fore.Svcs/Communication
12.	W008	Overseas Log Ops	I	$10K(83)	$20K Est.	II,III	$10K(84)	$0	$20K	$20K	6	$140K	Pub.Warn & Fore.Svcs/Observations
13.	W009	Wash. Area Techs.	N/A	$0	$0	I,II,III	$15K(84)	$30K	$15K	$30K	7	$190K	Pub.Warn & Foro.Svcs/Maint.& Repair
14.	W010	Dulles Airport Obs.	N/A	$0	$0	I,II,III	$30K(84)	$50K	$30K	$50K	9	$360K	Pub.Warn & Fore.Svcs/Aviate Weather
15.	W011	NWS Alaska Acts.	N/A	$0	$0	I,II,III	$100K(84)	$340K	$100K	$340K	35	$1,719K	Pub. Warn.& Fore.Svcs/Maint.&Repair
16.	W013	NWS Hawaii Acts.	N/A	$0	$0	I,II,III	$60K(84)	$140K	$60K	$140K	21	$721K	Pub. Warn.& Fore.Svcs/Maint.&Repair
17.	W015	NY Airport Obs.	N/A	$0	$0	I,II,III	$70K(84)	$140K	$70K	$140K	19	$697K	Pub. Warn.& Fore.Svcs/Aviat. Weathe
18	W017	LA Airport Obs.	N/A	$0	$0	I,II,III	$60K(84)	$100K	$60K	$100K	14	$486K	Pub. Warn.& Fore.Svcs/Aviat. Weathe
19.	A002	Metro Spt. Svcs.	I,II,III	$71K(83)	$830K Act.	N/A	$0	$0	$71K	$830K	73	$2,500K	Exec.Dir. & Admin/Admin.
20.	E001	NCDC ADP Ops.	I,II,III	$49K(83)	$650K Act.	N/A	$0	$0	$49K	$650K	155	$4,000K	Data & Info.Svcs/Climate Data Svcs.
21.	F001	NMFAlaska Fish.Act.	N/A	$0	$0	I,II,III	$130K(84)	$500K	$130K	$500K	55	$2,484K	Info.Col.& Anal/Info. Anal & Dissem
22.	F002	NE Fish. Ctr. Act.	N/A	$0	$0	I,II,III	$80K(84)	$100K	$80K	$100K	25	$700K	Info.Col.& Anal/Info. Anal & Dissem
23.	F003	NW Fish. Ctr. Act.	N/A	$0	$0	I,II,III	$80K(84)	$110K	$80K	$110K	23	$520K	Info.Col.& Anal/Info. Anal & Dissem
24.	F004	SW Fish. Ctr. Act.	I,II,III	$86K(84)	$0	N/A	$0	$200K	$86K	$200K	25	$1,000K	Info.Col.& Anal/Info. Anal & Dissem
25.	N004	Aero Chart Br.	I	$140K(83)	$1,100K Act.	II,III	$50K(84)	$0	$190K	$1,100K	208	$9,100K	Map,Chart,Geod.Prog/Aero.Chart Svcs
26.	N007	Marine Chart Br.	I	$99K(83)	$1,300K Act.	II,III	$50K(84)	$0	$149K	$1,300K	131	$4,650K	Map,Chart,&Geod.Prog/Naut.Chart.Svc
27.	N006	Tides&Water Levels	I	$122K(84)	$650K Est.	II,III	$50K(84)	$0	$172K	$650K	74	$3,700K	Ocean Svcs/Ocean & GL Assess.& Svcs.
28.	N011	Circ. Surveys Sect.	I	$50K(84)	$300K Act.	II,III	$25K(84)	$0	$75K	$300K	16	$800K	Ocean Svcs/Ocean & GL Assess. & Svcs
29.	M010	Atlantic Marine Ctr.	I	$228K(83)	$5,300K Act.	II,III	$75K(84)	$0	$303K	$5,300K	518	$22,000K	Marine Svcs/Ship Maint. & Spt.Svcs.
30.	A003	WASC Sply. Act.	N/A	$0	$0	I,II,III	$20K(84)	$100K	$20K	$100K	7	$500K	Exec. Dir. & Admin/Admin
31	E004	NGDC ADP Ops.	I	$0	$45K Est.	II,III	$10K(84)	$0	$10K	$45K	7	$300K	Data & Info. Svcs/Geophyn.Data Svcs
32.	N003	Imagery Proc. Lab	I,II	$0	$75K Est.	III	$0	$0	$0K	$75K	7	$500K	Map,Chart,&Geod.Prog/Coastal Map Serv
33.	ATB	FOB-4 Comp. Ops.	N/A	$0	$0	I,II,III	$150K(85)	$1300K	$150K	$1,300K	44	$9,400K	Exec. Dir. & Admin/Admin
34	W08	NMC Comp. Ops.	N/A	$0	$0	I,II,III	$100K(85)	$600K	$100K	$600K	22	$4,000K	Pub. Warn.& Fore.Svcs/Nat.Predic.Ct
35	M012	Pacific Marine Ctr.	N/A	$0	$0	I,II,III	$200K(84)	$6000K	$200K	$6,000K	533	$25,000K	Marine Svcs/Ship Maint.& Spt. Svcs.
36.	W020	O'Hare Airport Obs.	N/A	$0	$0	I,II,III	$30K(84)	$50K	$30K	$50K	10	$344K	Pub.Warn & Fore.Svcs/Aviate Weather
				$1,385K	$11,200K		$1700K	$15000K	$3,085K	$26,200K	2,746	$129,699K	

Table Two (

OMB Circular A-76 Studies
3/15/84

Estimated Internal Study Costs:

Study #	Activity	Costs to Date	Future Est. Costs	Est. Total In-House Costs
A001	NOAA Logistics Supply Center	40K	0	40
A004	MASC Library Services	0	15K	15
A005	MASC Supply Services	0	20K	20
E002	NOAA Library	30K	20K	50
E003	NODC ADP Operations	30K	20K	50
N008	Geodetic Resources Management	10K	90K	100
R001	GFDL Computer Operations	0	40K	40
W001	NWS Engineering Activity	0	100K	100
W004	Test & Evaluation Division	20K	20K	40
W005	Weather Chart Reproduciton	15K	10K	25
W007	Communication Operations Br.	20K	20K	40
W008	Overseas Logistics Operations	5K	8K	13
W009	Wash. Area Techs.	0	5K	5
W018	Dulles Airport Observation	0	10K	10
W011	NWS Alaska Activities	0	40K	40
W013	NWS Hawaii Activities	5K	15K	20
W015	NY Airport Observation	0	20K	20
W017	LA Airport Observation	0	20K	20
A002	Metro Support Services	30K	15K	45
E001	NCDC ADP Operations	60K	15K	75
F001	NW & Alaska Fish. Activities	0	40K	40
F002	SE Fish. Center Activitiies	0	40K	40
F003	NE Fish. Center Activities	0	40K	40
F004	SW Fish. Center Activitiies	10K	30K	40
N004	Aeronautical Chart Br.	70K	40K	110
N007	Marine Chart Br.	200K	40K	240
N006	Tides & Water Levels	60K	30K	90
N011	Circ. Surveys Sect.	25K	15K	40
N010	Atlantic Marine Center	125K	60K	185
A003	WASC Supply Activity	0	15K	15
E004	NGDC ACP Operations	5K	10K	15
N003	Imagery Processing Lab	10K	5K	15
ATS	FOB-4 Computer Operations	0	100K	100
NWS	NMC Computer Operations	0	75K	75
N012	Pacific Marine Center	0	150K	150
W020	O'Hare Airport Observation	0	15K	15
		770K	1,218K	$1,988

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Landsat

Question:

As you know, the Senate Commerce Committee has been considering legislation to commercialize land remote sensing. As a matter of fact, the Committee will order S.2292, a bill to achieve this end, reported on May 8th at our Executive Session. The House has already passed a similar measure, H.R. 5155.

My concern is that, despite the fact the Administration supports the commercialization of Landsat, it has not submitted a budget amendment to fund the program. It appears that the Administration is trying to make us eat the money.

1. The House Bill authorizes $10 million for the commercialization of Landsat in FY 1985, which is inadequate. The Senate bill authorizes $60 million which was the "best guess" we could obtain of the costs of commercialization. What is the Administration's "official estimate" of the cost of commercialization?

Answer:

The Source Evaluation Board for Land Remote Sensing Satellites is nearing the end of its evaluation of responses to the RFP released on January 3, 1984. By the first part of June 1984, this evaluation will be presented to Secretary Baldrige so that a decision can be made on the transfer of Landsat. Until that time, the Administration cannot provide an "official estimate" of the cost of commercialization without undermining the transfer process.

It is not the intention of the Administration to make Congress "eat the money" required for the transfer. At the time a decision is made regarding the transfer, appropriate requests will be made for required funding.

Question

2. Since it is clear that the RFP Source Evaluation Board process is drawing to an end (they have reduced the field to three potential award winners), is it not a judicious time for the Department to submit a formal budget request for this activity?

Answer:

As previously stated, appropriate requests for required funding can be made only at the time a decision is made regarding the transfer and negotiations are completed if the decision is to transfer.

Question:

The President has advanced more research at the Federal level, and there have been substantial increases in atmospheric and oceanic R&D budgets throughout government, while at the same time NOAA's budget has been reduced. The "selected increases" in NOAA's budget belie the fact that the overall budget has decreased alarmingly over the past 3 years. Acid rain research, which is used as an example in the Secretary's response to this question, is an erroneous illustration, since the funding has stayed roughly the same and the $800,000 the subcommittee added on last year has been eliminated from this year's budget request. Furthermore, the second part of the answer is gibberish. Why is the R&D budget for oceanic and atmospheric matters being increased elsewhere in the government, but NOAA's budget receives an overall reduction in these areas? We would greatly appreciate a responsive answer.

Answer:

Funding for oceanic and atmospheric research in the President's FY85 budget reflects the Administration's support for long-term, basic research on oceanic and atmospheric processes as well as research required to address a specific problem of national concern (e.g., acid rain). NOAA will continue to participate in the national acid rain research program at the level recommended by the Interagency Task Force. NOAA will also continue fundamental research on the oceanic and atmospheric processes and interactions which determine our weather and climate. The majority of the R&D reductions proposed in NOAA's FY85 budget involve programs which have fulfilled their original objectives or are more appropriately supported by the private sector or state interests which benefit from their results.

Question:

Once again, the fisheries segment of NOAA's budget is being reduced, particularly research. Since research is central to the management of our fisheries under the Fishery Conservation and Management Act, how do you propose that fisheries be managed properly without an adequate level of research? A response that suggests that the proposed level of research is adequate is unacceptable since experts in this field are in agreement that this is not the case.

Answer:

Most of the major fisheries within the Fishery Conservation Zone are already under management or soon will be. The research proposed for reduction is viewed as lower priority relevant to current management needs. The selection of lower priority research includes its degree of linkage to high priority fisheries mangement and conservation efforts, the extent of existing scientific knowledge, data gaps, overall budget targets, and the judgment of experienced managers.

Question:

For the last several weeks, severe storms have had a devastating impact on many different parts of the country, not only disrupting commerce, but accounting for many deaths and injuries. The technology is either under development or is currently available to provide better protection for lives and property. Since current estimates show that we are losing around $20 billion to the economy yearly due to the effects of storm-scale weather, what is NOAA doing to respond to this situation? What can the Congress expect the agency to propose in the FY86 budget?

Answer:

NOAA is using two basic approaches to provide more accurate weather predictions and consequently minimize the impact of severe storms These approaches are development and design of improved observing systems and increasing the basic understanding of the thunderstorm scale and mesoscale ("middle" - between cyclonic scale features of synoptic weather and single thunderstorms) weather systems.

Improving observing systems involves enhancing data collection, analysis, processing, display, and synthesis in order to permit more timely warnings of major severe weather activity, including tornados, hail, severe thunderstorms and flash flooding, etc. In the area of improving data collection, NOAA is working on development of automatic weather stations and rain gauges, sophisticated Doppler and dual-polarized radars (NEXRAD), and continuous vertical profilers.

The PROFS program is addressing the problems of synthesizing the data from large arrays of sensors and displaying the information in a usable format. The program is directly chartered to improving warnings via a more optimal application of available technology. Similarly, the Centralized Storm Information System (CSIS) evaluated at the Severe Storm Forecast Center provides improved watches for tornados and severe storms by improving our capability to acquire, display, manipulate and use satellite and other meteorological information.

In addition, techniques are being developed to improve approaches for utilizing satellite sounding to more accurately portray the vertical and horizontal structure of the atmosphere. For example, the atmospheric sounder (VAS) on recent GOES satellites adds the critical element of frequent vertical temperature soundings, as well as detailed, frequent information on the moisture structure.

NOAA is also working to improve understanding of the physical processes involved in severe weather. This includes improved subjective and computer based weather forecasts that encompass outlooks, watches, and warnings for severe weather phenomena ranging from tornado, high winds, rainfall, flash floods, etc. NOAA's National Severe Storms Laboratory exists almost solely to advance the state of understanding of these weather systems. Heavy emphasis is on the development of the capability of Doppler radar through a number of cooperative efforts with other agencies. The laboratory is deeply involved in both the design for the field deployment of new technology and pursuing the knowledge of storm structure. Both efforts are aimed at improving prediction of severe thunderstorms and tornadoes.

Another group, the Weather Research Program, is involved in studying large mesoscale convective systems that are responsible for 70 percent of the midwestern rainfall. These systems are also responsible for local severe storms and flashfloods. The group is designing observing systems, developing numerical models, and training operational personnel on newly developed technology.

Hurricanes are another type of very dangerous severe storms being studied by NOAA. In its Hurricane Research Division, storms structure, steering mechanisms, and precursors are being studied and modeled. Their goal is to provide improved forecasts of track, storm intensity, and flooding potential.

The Geophysical Fluid Dynamics Laboratory is developing numerical models for severe storms. These models are basic to the understanding of the physical processes and to the prediction of severe weather systems.

Question:

Before making its initial decision to pursue contracting studies under OMB Circular A-76 to determine whether to contract out NOAA's marine services and aeronautical charting activities, did NOAA consult with the Defense Mapping Agency, Federal Aviation Administration, or any of the numerous groups of aviation and marine interests that depend on NOAA charts and other products for personal and public safety?

Answer:

NOAA has the responsibility for the production of nautical and aeronautical charts. OMB Circular A-76 lists mapping and charting as commercial activities. NOAA was aware of the fact that the Defense Mapping Agency has a very substantial contracting program for production of nautical charts. Additionally, NOAA officials were aware of the fact that the vast majority of commercial airline pilots use private sector aeronautical charts,instead of NOAA's charts. All of these factors supported the NOAA management decision to conduct A-76 reviews of these activities.

The Defense Mapping Agency (DMA) was consulted during the management study of the Marine Chart Branch.

Representatives of the following organizations were consulted in the management study of the Atlantic Marine Center: UNOLS, U.S. Coast Guard, U.S. Power Squadrons, U.S. Navy Military Sealift Command, and the Federal Aviation Administration (FAA). Additionally, the outside technical consultant advising Arthur Young & Co. was the former head of Mapping, Charting, and Geodesy of the Survey Operations Division, U.S. Naval Oceanographic Office (NAVOCEANO).

Representatives of the following organizations were consulted in the management study of the Aeronautical Chart Branch: numerous FAA offices, DMA, National Transportation Safety Board, U.S. Geological Survey, Airline Owners and Pilots Association, Airline Pilots Association, Jeppeson Corporation, Department of Justice, National Association of State Aviation Officials, and the Alexandria Drafting Company.

Question:

At a recent House hearing, a Defense Department witness stated that NOAA nautical charts are of excellent quality and are relied on exclusively for US military navigation in waters adjacent to the United States. In view of the obvious national security importance of high quality NOAA charts, why is NOAA actively considering the contracting out of its nautical surveying and charting functions, which could put its chart quality at risk?

Answer:

The Defense Department relies on NOAA charts in U.S. waters and DMA charts in international or foreign waters. The DMA has had a concerted program for the last 12 years of expanding their nautical chart production through the use of private sector contractors. We have discussed this program in detail with them and have found that they are very satisfied with the quality of charts produced by their contrators. The quality of NOAA charts will not be compromised. However, DMA has lead the way by showing that contracting for production of charts does not compromise quality, when the contracting program is reasonable and appropriate measures are taken to assure quality. NOAA will cost compare with the private sector for the same functions that DMA presently contracts for.

As to the issue of contracting for hydrographic surveys, there is no question about the capability of the private sector to conduct quality surveys. The Navy, Army Corps of Engineers, Canadian Hydrographic Service, and the British Hydrographic Office have been contracting for hydrographic surveys for many years.

Question:

Last fall, NOAA awarded an A-76 contract for distribution of its aeronautical and nautical charts and gave the contractor 9 months to get ready. Now the RIF notices have gone out to in-house distribution employees and the contractor is reportedly having difficulty operating the computer program required for proper chart distribution.

a. Is the contractor in jeopardy of defaulting on the contract?

Answer:

The contractor is not presently in jeopardy of defaulting on the contract.

Question:

b. What steps have been taken to ensure that charts are distributed in a timely manner in case the contractor cannot perform?

Answer:

The contractor is having more difficulty than expected in mastering the computer program used by the Distribution Branch. Operation of the computer software is not presently conducted by NOAA employees, but is performed by a separate contractor. NOAA's overall contractor, MCRB, is having no unusual problems in the distribution of charts. They seem to understand the operation very well and are getting the charts out. NOAA will continue to closely monitor the situation to insure that the charts continue to be distributed in a timely manner.

Question:

c. The aviation community relies heavily on the requirement that aeronautical charts be updated and revised charts be in the hands of all users every 56 days. Won't FAA be facing a dangerously chaotic situation if updated NOAA aeronautical charts are not delivered on time to air traffic controllers and all other users and privately-produced charts (based on data provided by NOAA) are properly in the hands of commercial and general aviation users?

Answer:

Based on the performance of MCRB to date, no problem is foreseen in the delivery of aeronautical charts on schedule.

Question:

Several cases have been brought to our attention regarding the circumstances surrounding employess being RIFed, and their rights to a comparable offer from the contractor in those cases where the function is being contracted out. Many of these cases, however, involve the same function but at a drastic reduction in pay. Yet, if an employee does not accept the position offered by the private contractor, he or she may lose their severance pay. Please state specifically what the rules are under these circumstances regarding the pay that must be offered to a Federal employee at NOAA, the position that must be offered and other relevant information concerning the offer from the private contractor. What are the employee's rights under these circumstances?

Answer:

The following excerpts from the draft NOAA Directive 36-16 explain employees rights during A-76 conversions.(copy of the draft NOAA Directive 36-16 has been retained in the Subcommittee files.)

Geodetic Survey

Question:

Earlier this year one of my constituents, David Eugene Huff, commented that the Geodetic Survey "is scrimping to the point of only having three crews for the whole U.S." He also noted that there "were many more Geodetic crews during the Great Depression than now."

1. How many positions and what amount is requested for the Geodetic Survey in fiscal 1985 and what have been the position and funding levels for the last 10 years?
2. Over the last 10 years, what has been the general direction of the Geodetic Survey?

Answer:

The NOAA request for the Geodetic Reference System program in FY 1985 is 288 positions and $15,264K. Program staff effort and funding over the past 10 years are outlined in the following table:

($ in thousands)

Fiscal Year	Funding	Total Staff Years	Field Survey Staff*	=	Horz. Surv.	+	Vert. Surv.	Other (Astro, Gravity, Mark Main.)
1975	7,986	346	126		77		19	30
1976	8,435	330	126		83		16	27
1977	8,992	301	**					
1978	12,380	301	**					
1979	12,865	301	**					
1980	13,482	300	110		20		60	30
1981	14,078	300	**					
1982	14,422	296	**					
1983	15,991	296	107		10		70	27
1984	16,868	310	91		10		58	23
1985	15,264	288	73		10		48	15

* Included in Total Staff Years

** A further breakdown of the Field Survey Staff is unavailable

The general direction of the geodetic survey over the past 10 years has been one of upgrading the Geodetic Reference System from the technological standards of the 1920's to a standard of compatibility with needs and usage in 1985 and beyond. This has involved, beginning in 1975 and 1978 respectively, major efforts to redefine and readjust the fundamental horizontal and vertical networks. The table above shows a corresponding shift in field survey staff from horizontal surveys to the vertical network project. The horizontal leveling program is testing the Global Position System (GPS) instead of the electronic measuring system (line-of sight) that is currently deployed. The increased productivity in the vertical leveling program results from the mounting of equipment on motorized vehicles. This effort has been successful in areas where relatively flat terrain can be easily transversed using motorized vehicles. In both cases, the technological improvement has reduced the need for large field parties.

South Carolina Cooperative Geodetic Survey Program

Question:

Governor Richard W. Riley of South Carolina has written to me of his concerns about the Cooperative Geodetic Survey program we initiated in 1979. He indicates that this program has been most successful in training and assuring a South Carolina capability in this field. However, he states that "without continued federal participation, this training and fundamental data gathering for accurate mapping and surveying cannot continue."

1. Briefly, what is NOAA's overall assessment of the cooperative agreement with South Carolina?

2. How much is required to maintain the 1984 program

level in 1985?

Answer:

The NOAA/South Carolina Cooperative Program has been an outstanding success as Governor Riley states. National network surveys have been extended over previously unsurveyed regions of South Carolina. State personnel have been trained to perform surveys for State mapping needs and engineering and environmental measurements essential for development and economic growth. The program has progressed to a high level of productivity with coordinated planning and execution of the National Reference System surveys. Specific densification surveys are being performed by the State. The high level of productivity in the State program requires that fundamental National Reference System surveys be established in the remaining unsurveyed areas of the State. At the 1984 funding level of $400K, the Cooperative Program will be completed by 1991.

Vertical Releveling Program

Question:

Ferrell J. Prosser, the South Carolina State Surveyor, has written me of his concerns about the stretching out of the national vertical network program. Instead of this program being completed in 1987, it is now being extended to 1994.

1. Apparently the stretching out of the program will lower the annual cost but result in no overall savings. By extending the life of the program, it seems likely that overall cost will increase. By extending this program, aren't we being penny-wise and pound foolish?

2. I want to quote for the record several paragraphs from Mr. Prosser's letter and ask that NOAA respond in the record to these concerns.

> "When this program began in the late 1970's, the original concept was to accomplish the necessary field work over a seven year period. Completion of the project within this seven year time frame was judged necesary in order to minimize effects of crustal movement in the overall adjustment in order to maintain a high level of integrity throughout the network. The State of South Carolina recognizes the importance of completing this new adjustment in a timely manner and because of this State personnel and funds have been committed to assist NGS in accomplishing releveling operations in this State. In 1980 and 1981, field crews from the South Carolina Geodetic Survey expended an estimated $125,000 of State funds to complete major line releveling in South Carolina for NGS. We at the State level have a strong appreciation for the benefits of an upgraded national vertical network."

"The NGS vertical control network is used extensively by surveyors and engineers in direct application and by many others in indirect application in South Carolina. Federally mandated mortgage insurance programs create a big demand for vertical control and they increase the cost to the public if vertical control isn't located within a resonable distance. Presently, our state geodetic field crew is working on a project in the coastal zone area to densify the vertical control in that area."

"There is a need to increase the density of the vertical network all over the state and we are working toward that goal. It is our policy to accomplish all field work to NGS standards and submit our data to them for publication as part of the national network. South Carolina is investing $250,000 per year in State Funds to densify the level network throughout the State."

"We now have more than three years of levels (about 2000 new bench marks) of completed vertical control data in our files which is unadjusted. These unadjusted values differ by a significant amount from the published adjusted values and are a constant source of confusion to the users of these data. This is most likely a common problem nationally. It seems unreasonable that we must wait ten more years to have these data adjusted to the new vertical reference system. The impact of this alone should justify early completion of the new adjustment. An interim adjustment to make the new lines compatible with the old lines just within South Carolina would not be an acceptable solution because it would just add another set of values when the network is adjusted nationally."

"We feel that the new adjustment of the vertical network is urgently needed. The total cost of bringing this program to an early completion is probably less than would be required by extending the project over a much longer period of time. We fail to see the reasoning behind this budget action since there is no real cost saving in extending the program and the integrity of the new network is in danger unless money is spent for additional work."

"The best interests of the Nation as well as South Carolina would be served if this program were

> restored to its original schedule. Our contribution to this program has been in the spirit of continuing state-federal cooperation. We would hope that the same spirit of cooperation would be reciprocated at the federal level in restoring this program."

Answer:

As stated in the Fiscal Year 1984 Congressional Budget for NOAA, completion of the vertical network readjustment has been extended from 1987 to 1994 due to a reduction in the level of effort from 10,000 to 6,000 kilometers of primary network releveling annually. Additional releveling will be required because of the extension, increasing the total cost of the program.

In response to Mr. Prosser's concerns, we appreciate the suggestions of the users and contributors to the National Geodetic Reference System. The Fiscal Year 1984 Budget reduces funds available for releveling by $1,000,000. A number of actions are being taken to ameliorate the effects of the budget reduction on the releveling program. NOAA is making every attempt to seek savings through increased productivity that can be applied to the releveling effort in Fiscal Year 1984. Support is being given to research in leveling instrumentation that could lead to increased leveling productivity in future years. NOAA will be testing a prototype trigonometric measuring system during the next year to determine the feasibility of implementing this system for utilization by field survey staff.

Fisherman's Guarantee Fund

Question:

According to the President's Budget the Fisherman's Guarantee Fund will have $2,448,000 available for appropriation in fiscal 1985. However, only an appropriation of $1,800,000 is requested. The American Tunaboat Association has reminded me that this fund consists of fees collected from fishermen. They comment that if the claims exceed the proposed appropriation cap, they cannot be paid even though there are sufficient amounts on hand in the fund.

1. Why is it anticipated that the number of claims received and processed in 1984 and 1985 will be 25% or so lower than the actual numbers in 1983?

2. How is it that we process 3 fewer claims in 1984 but the payment of claims increases by $504,000 over the amount paid in fiscal 1985?

3. Since 1978, how many times have the claims in a fiscal year exceeded the amount appropriated, so that payment must be delayed until the following year's appropriation?

4. This account consists wholly of fees paid by

> fishermen. If your car was damaged by someone else you certainly would not want to wait on some fiscal hocus-pocus to settle your claim. Similarly, should we not appropriate the full amount of the fund to make sure it is available if needed?

Answer:

The Administration has requested a decrease in the appropriation authority permitting disbursement of funds for payment of claims under the Fisherman's Protective Act of 1967. In FY 1983, approximately $1.6 million was expended from the Fishermen's Guaranty Fund in payment of claims. In FY 1984, claims under the Fisherman's Guaranty Fund are expected to be approximately $2 million. The expected decrease in the number and amount of claims received from fiscal year 1984 to fiscal year 1985 is a result of: (1) a change in the tuna industry's fishing pattern - moving further out in the Pacific Ocean and away from the coastline of Mexico and Central America; and (2) the signing of fishing agreements with various Central American countries. While it may be expected that the handling of fewer claims would result in the disbursement of less funds, the length of detention periods has been increasing. This results in larger claims. This is particularly true for seizures of U.S. shrimp vessels by Brazil.

Since 1978, there have been two instances where claims in a given fiscal year have exceeded the amount appropriated. However, supplemental appropriations allowed payment of the claims in the same fiscal year. Frequently, claims initiated in one year may not have necessary documentation completed in time for payment during the same fiscal year, and payment is made under the following year's appropriation.

Every effort is made to settle each claim promptly. If it becomes apparent that the amount of the claims will exceed the level of funds made available in annual appropriations, a supplemental appropriation request is made. It should be pointed out, however, that carry-over funds from previous years are available to satisy claims which arise in succeeding fiscal years. For example, approximately $300,000 was available in carry-over from FY 1983. This carry-over increases the availability of funds from the amount by Congress in FY 1984 (approximately $2.1 million) to $2.4 million.

Great Lakes Environmental Research Laboratory

Question:

Governor Blanchard of Michigan has written me of his concern that NOAA is again proposing to terminate funding of the Greatr Lakes Environmental Laboratory. This letter is similar to the many that I have received about the importance of GLERL to the Great Lakes Region and I will place it in the record at this point.

April 11, 1985

The Honorable Ernest F. Hollings
Senate Committee on Appropriations
Subcommittee on Commerce, Justice,
State and Judiciary
U.S. Capitol, Room S-146
Washington, D.C. 20515

Dear Senator Hollings:

Your support is needed to restore or increase the $3.6 million budget of the Great Lakes Environmental Research Laboratory (GLERL) in the fiscal 1985 appropriations for the Department of Commerce, National Oceanic and Atmospheric Administration. For the fourth straight year, no funding for GLERL has been recommended, and I am hopeful that Congress will once again overturn that recommendation. The full funding of GLERL's research program is critical to the world's largest single source of surface freshwater--the Great Lakes.

As Governor of a state with 3,300 miles of Great Lakes shoreline, 38,000 square miles of Great Lakes surface area, and an economy whose health is substantially linked to that of the Lakes, I am convinced that GLERL research is unique and instrumental in defending the future of the Lakes. GLERL is the sole source of research on the physical hazards to recreational boating, commercial navigation, and shoreline property owners caused by Great Lakes wind, waves, ice, and high water levels. It is also a primary source of research on the management and cleanup of petroleum and hazardous substance spills on the Lakes.

Even more significantly, GLERL is a crucial tool for policymakers of the Great Lakes region in analyzing the threats caused by toxic contamination and possible large-scale withdrawals of water. More than 800 chemical compounds and heavy metals have been identified in Great Lakes fish, constituting a potential jeopardy to both human health and our important commercial fishing, sport fishing , and tourist industries. GLERL's work in detecting loadings and ecosystem reactions to toxic pollution in the Lakes is esential to our understanding of this problem. Only GLERL is equipped to inform policymakers of the potential environmental effects of proposed large-scale withdrawals, which could have far-reaching implications for our region and the country.

The administration recommendation for zero funding has apparently been based on the contention that Great Lakes research is a responsibility of the states. This is simply not true. Much of GLERL's work is helpful in carrying out international commitments made by the U.S. Government under the 1978 U.S.-Canada Great Lakes Water Quality Agreement. Further, GLERL's research supports federal agencies such as the Coast Guard, Army Corps of Engineers, Fish and Wildlife Service, and the St. Lawrence Seaway Development Corporation.

GLERL's work is easily distinguished from that performed by any other research laboratory. EPA's Large Lakes Laboratory has been crippled by budget cuts in recent years, and has never played the GLERL role of support research for all Great Lakes resource managers. Its activities concentrate on applied research supporting specific regulatory efforts of EPA.

GLERL's research benefits not only the eight Great Lakes states, but the entire nation. Some 95% of the United States surface freshwater is found in the Lakes. The protection of this unparalleled natural resource is of national and international significance. GLERL is the federal focal point for the background research we need to fully defend the Great Lakes.

I strongly urge you to support continued full funding of research for GLERL during fiscal 1985. Thank you for your assistance.

Sincerely,

James J. Blanchard
Governor

The Canadians have also indicated to me their concern about ending the support of GLERL. They indicate that a number of important and critical environmental issues are being addressed by GLERL.

1. How will the U.S. carry out its responsibilities under the U.S.-Canadian Great Lakes Water Quality Agreement without GLERL?

Answer:

The principal bilateral agreement between the U.S. and Canada for Great Lakes water quality and pollution research is the U.S./Canadian Water Quality Agreement of 1978. EPA is the lead agency for U.S. participation under this agreement and will continue most of the work of its Great Lakes National Program Office. Similarly, the Department of Interior will continue its fisheries laboratory in the Great Lakes. In addition, a number of universities in the area presently have Great Lakes programs which will contribute to research on pollution and other problems in the Great Lakes.

Question:

2. How much is required to maintain GLERL at the fiscal 1984 level in 1985?

Answer:

We believe that Federal support for GLERL should terminate in FY 1985. The state and regional interests which benefit from programs currently conducted at the Lab should determine which of these research and service activities should be continued. The nature of these activities will define the costs of continuing the program.

Weather Forecast Offices

Question:

Senator Mitchell has alerted me to his concerns about the closing of the NWS Forecast office in Portland, Maine, and in 7 other places, including Albany, New York. Senator Mitchell believes that this would double the workload of the Boston office without increasing Boston's resources.

1. In view of Senator Mitchell's concerns, why are the 8 offices being downgraded?
2. How many positions and dollars are required to be added to the 1985 request for each of the 8 offices to maintain the 1984 level?

Answer:

The eight Weather Service Forecast Offices will not be downgraded; they will remain Forecast Offices, will be staffed by meteorologists, and will retain public forecast, warning, and marine forecast functions. They will continue to provide forecast guidance to nearby WSO's. In performing an analysis of staffing and workload, NOAA/NWS has determined that the responsibility for preparing aviation forecasts at these WSFO's could be consolidated at nearby WSFO's without affecting the program, thereby permitting a reduction in staff at each of the eight WSFO's. The aviation forecast products will continue to be available at all offices just as they are at present.

Also, the aviation function at Portland would be consolidated at the Boston WSFO and the Albany function consolidated at the New York, New York WSFO.

The number of positions and dollars that would be required to maintain each of the eight offices at the 1984 level is as follows:

Juneau, AK	4 pos./$ 92K	San Juan, PR	1 pos./$ 33K
Portland, ME	5 pos./$109K	Lubbock, TX	6 pos./$142K
Reno, NV	6 pos./$109K	Milwaukee, WI	5 pos./$ 90K
Albany, NY	8 pos./$169K	Cheyenne,WY	5 pos./$ 92K

Western Kentucky Radar

Question:

Last year this Subcommittee strongly supported Senator Huddleston's efforts to obtain weather radar for western Kentucky.

What is the present status of the $1,000,000 we appropriated last year for the radar in western Kentucky?

Answer:

Site surveys have been made and it has been determined that the best location for the radar is at the Paducah, Kentucky, airport. NWS representatives have met with the Airport Manager and Airport Board, and have their complete agreement on specific site plans. NWS will set up a temporary office near an abandoned air traffic control tower; the radar will be located on a nearby tower. As soon as roads and utilities planned by the airport are established, NWS will install a permanent facility. NWS expects to have a local warning radar staffed and operating at Paducah by no later than later summer or early fall 1984.

QUESTIONS SUBMITTED BY SENATOR DECONCINI

Question:

A contributing factor in the flooding along the Colorado River during 1983 was the lack of timely and accurate weather forecasts and warnings. What changes has the National Weather Service made during the past year to insure more timely and accurate forecasts?

Answer:

A number of changes have been made during the past year to improve forecasts and warnings.

- o The Bureau of Reclamation, in cooperation with the Geological Survey, automated 18 river gages this spring.
- o The National Weather Service's Colorado River Basin Forecast Center made improvements in their technical procedures. These include:
  - a. Developed new computer programs to provide current analysis of hydrometeorological conditions for updating forecasts.
  - b. Developed new probable maximum and minimum (10 percent and 90 percent probabilities) forecast procedures using 80 years of data.
  - c. Evaluated effects of using May 1 and April 1 snow readings. April 1 snow has proven to be the best month to correlate with runoff.
  - d. Introduced available 1983 data into the calibration data base. This will help NWS predict extremes of this magnitude in the future.
  - e. Developed a new regression model including 1983 data for Utah Lake, the Great Salt Lake and Lake Powell inflow; data going back to 1908 were used. This model will help with improved predictions until data are fully loaded into operational physical models in 1988.
  - f. Because 1983 produced such a high runoff ratio to rainfall amounts, a complete analysis is underway to use the monthly historical data in such a way as to identify exactly why efficiencies were so high. This analysis will also assist with forecasts until physical models are fully operational in 1988.

Question:

Is funding and staffing adequate for the National Weather Service's Colorado River Basin Forecast Center? If not, then what additional funds and staffing are required for FY 1985?

Answer:

Yes, funding and staffing are adequate.

Question:

Are additional weather data stations needed by the National Weather Service or the Soil Conservation Service to adequately monitor snowpack, precipitation, and runoff? What additional funds will be needed in FY 1985 to purchase and install needed weather stations?

Answer:

While we cannot speak for the Soil Conservation Service, The President's FY85 budget proposal is adequate to fund the National Weather Service's responsibilities for weather data stations in the Colorado River Basin.

Question:

Could you provide for the record the locations and approximate costs of weather data stations that are needed?

Answer:

We have not identified a need for additional NWS weather data stations in the Colorado River Basin in FY85.

Question:

I wonder if you could clarify for the record the effect, in terms of improved accuracy of forecasts or advanced warning capability, that would exist when additional data stations were added and staffing increased at the Colorado River Basin Forecast Center?

Answer:

The greatest improvement in forecasting would be the prediction of daily inflows to the large Colorado River Basin reservoirs based on analysis of data collected continuously from an automated data network and fed into a physically based rather than a statistical model. This would represent a major upgrade in the NWS services which now provide only monthly updated forecasts, derived from statistical models, of the total volume of water expected in the reservoirs from snowmelt.

Also, hydrological/meteorological extremes are difficult to account for in a statistical model. Short- and long-term peaks and volumes could be predicted more accurately with an automated data network and a physically based model.

Question:

The last forecast I saw for the Colorado River Basin anticipated a runoff that was approximately 150% of normal. Could you provide for the record the latest forecast for the Basin? Can we expect a repeat of last year when the forecast changed from only slightly above normal on May 1, 1983 to a forecast of 210% of normal on June 28, 1983?

Answer:

The April-July water supply forecast as of May 16, 1984 for inflow to Lake Powell is 13.3 million acre feet or 178% of normal. This number could increase if precipitation and temperatures are above normal for the rest of the snowmelt season. The forecasts beginning January 1, 1984 are attached.

COLORADO RIVER MOST PROBABLE FLOWS
PROJECTED BY NWS RFC IN
SALT LAKE CITY FOR LAKE POWELL
(GLEN CANYON DAM)

DATE OF PROJECTIONS:	(APR - JULY) ACRE-FEET	PERCENT OF AVERAGE
JANUARY 1	13,000	174
FEBRUARY 1	12,400	166
MARCH 1	11,300	151
APRIL 1	11,500	154
MAY 1	13,000	174
MAY 16	13,300	178

NOAA DIRECTIVE 36-16

SECTION 7. PERSONNEL ADMINISTRATION

7-1. General.

a. This section provides general guidelines on personnel administration to ensure coordination of all necessary personnel related actions with A-76 cost studies. It is not meant to convey any additional rights to employees beyond those already provided by OPM and DOC personnel policies and regulations. The Servicing Personnel Office (SPO) must be part of the cost study to provide reliable personnel information necessary to complete the cost study process and to minimize the personnel turbulence and adverse effects on employees resulting from conducting an A-76 review.

b. PRs will ensure that the SPO is involved in the cost study from its start. This is necessary for the SPO to keep union officials and employees informed on all personnel related actions during and until the completion of the cost study.

c. The SPO will:

(1) Participate in the MES by properly evaluating and classifying, in accordance with the Office of Personnel Management position classification standards, all new or restructured positions proposed in the MEO and MECO;

(2) Participate in the development of the cost of in-house performance to include estimating the disposition of the affected employees to assist in computing one-time personnel related costs;

(3) Plan and execute reduction-in-force (RIF) actions;

(4) Participate in the development of programs for the selection and training of contract administration and quality assurance evaluation personnel; and

(5) Monitor out-placement programs, compile personnel data for after action reports on actual disposition of affected employees and personnel related costs, i.e., severance and retained pay costs, retraining costs, relocation costs, etc., and assist the COTR in monitoring the contractor's compliance with adversely affected employees' right of first refusal for employment openings on the contract.

7-2. Reductions-in-Force.

a. Policies and Procedures. General guidance for conducting RIFs is provided in Chapter 351, Federal Personnel Manual and DAO 202-351. In planning RIFs resulting from A-76 cost studies, the following factors should be considered.

(1) The conduct of NOAA cost studies may result in the completion of numerous studies in the same general time frame. The NOAA Personnel Director should study the impact on conducting successive RIFs vis-a-vis a single coordinated RIF action. If this assessment demonstrates a single coordinated RIF action is more feasible to reduce turbulence created by separate RIF actions, a recommendation should be made to the Organization Coordinator to consider adjustments in milestone planning to accomodate a single RIF.

(2) The SPO should begin preparing a request for authority to conduct a RIF immediately following notification on the results of the cost comparison. This will ensure that authority to conduct a RIF is approved by DOC by the time the RIF notices must be issued.

(3) RIF notices required as a result of an A-76 cost study may not be issued until contract award date (contract win) or cancellation of the solicitation (in-house win) or until fifteen (15) days after receipt of a reprogramming notice from DOC. The date of issuance for the RIF notice must consider the transition period identified in the solicitation (contract win) or the time frame, normally ninety (90) days to implement the MEO (in-house win). RIF actions should provide for as much advanced notice as possible to the affected employees. The effective date of RIF separations should be COB on the day before the contractor assumes operational responsibility (contract win) or by COB on the day before the MEO must be implemented.

c. Section 3.03 of DAO 202-351 provides general guidance for the development of competitive areas for conducting RIFs. It requires NOAA to maintain competitive areas separate from all other parts of the Department. Chapter 03 of the NOAA Personnel Handbook establishes a "competitive area" within NOAA as follows:

(1) "In the Departmental service all NOAA units within the local commuting area consitute a single competitive area"; and

(2) "All field service installations of a primary organizational element within a local commuting area shall consitute a separate competitive area." Each Line Office is considered a primary organizational element, while all Staff Offices combined are considered to be one primary organizational element. Modifications to the established criteria for developing competitive areas may be made only with prior approval by the DOC Director of Personnel.

d. Accurate position descriptions are essential to proper application of RIF procedures and for the defense of appeals initiated by employees who are assigned or separated as a result of a RIF. The SPO should work with the appropriate line or staff office manager in reviewing the currentness and accuracy of the position descriptions of all affected employees. Outdated and inaccurate position descriptions must be updated prior to the implementation of a RIF.

7-3. Restrictions on Staffing.

a. The following procedures will be followed for filling vacancies that occur for positions in activities scheduled for or undergoing A-76 cost studies.

(1) The program manager will determine if the vacancy must be filled, and the impact on the operations if it is not filled.

(2) If staffing is required, the program manager should first attempt to fill the vacancy by:

(a) Temporary, term or WAE appointments; or

(b) Arranging for time limited assignments (temporary promotion or detail) of employees with the same or similar skills from other organizations.

(3) If the above strategies fail, the program manager may recommend career appointments.

(4) Requests for permanent career appointments must be submitted through the Chief, NOAA Personnel Division, and the Associate Administrator to the Deputy Administrator. The following type of information should accompany these requests:

(a) A description of the efforts taken to fill the vacancy on a time limited basis;

(b) Why these efforts were unsuccessful; and

(c) The impact on the program (unacceptable delay or disruption of essential operations) if the vacancy is not filled.

b. During implementation of the results of an A-76 cost study, selective hiring freezes will be implemented for vacancies in other NOAA activities not undergoing an A-76 cost study and in activities undergoing a cost study, but at least 90 days from implementation of the results of the cost study. The freeze will be restricted to the same grade level and series as those in the activity affected by the RIF. The hiring freeze will begin on the date of contract award or cancellation of solicitation and extend until the effective date of the RIF. The freeze is necessary to stabilize activity on the retention registers and provide maximum opportunities for assignment of affected employees to the MEO, MECO, and other vacancies.

7-4. Requests for Early-Out Authorization. The SPO will conduct an employee impact assessment based on the results of the cost comparison. If the assessment meets the requirements in FMP Letter 351-17 for early-out authorization, the NOAA Personnel Director should submit a request for early-out authorization to the DOC Personnel Director through the Director, Office of Administrative and Technical Services.

7-5. Recruiting Procedures for Filling Positions in the MEO and MECO. Most positions occupied by employees in the predecessor organization are abolished as a result of developing a MEO or MECO structure. This is because positions in the MEO and MECO will be new or restructured positions. The following procedures will be followed for filling positions in the MEO and MECO.

a. Positions in the former organization that can clearly be identified in the MEO or MECO create an entitlement to the former incumbent(s) for these positions. These positions will be filled with the employees having the successor rights to them. If two or more employees have successor rights to a position, it will be filled on the basis of retention standing between the employees with successor rights.

b. Positions in the MEO and MECO that have been restructured, but contain only minor changes from the former position's duties and responsibilities, and provided no higher graded requirements have been added, will also be filled with employees having successor rights to them.

c. New positions and restructured positions (with major changes in the duties and responsibilities of the former postion) will first be filled with employees in retention order.

d. New and restructured positions that cannot be filled with employees from retention registers will be filled in accordance with NOAA's Merit Assignment Program procedures or other appropriate means.

7-6. Right of First Refusal Procedures.

All employees adversely affected or separated as a result of an A-76 decision to contract the activity under review will be afforded the right of first refusal for employment openings on the contract for which they are qualified. "Adversely affected" is defined as any employee whose position is abolished or who is released from his/her competitive level.

b. The CO assigned to the cost study will be responsible for obtaining from the contractor a list of initial employment openings for which affected employees have the right of first refusal and information regarding the contractor's employment procedure.

c. The SPO will be responsible for identifying all adversely affected employees who will be afforded the right of first refusal. Affected employees will be afforded the right in accordance with the following tier process:

(1) All employees in the activity under review (permanent full-time and part-time employees) whose positions will be abolished, will be provided the first opportunity for initial employment openings on the contract. This group will also be comprised of those employees who will be releasable from their competitive level.

(2) The second group of employees who will be provided the right of first refusal (provided initial employment openings on the contract still exist) will be all other permanent full and part time employees who will be released from their competitive level during the second and subsequent rounds of competition and temporary employees in the activity to be contracted.

(3) There will be no tier process for implementing the right of first refusal for additional employment openings (employment openings that become available during the first 90 days of contract performance). All employees desiring to exercise their right of first refusal during this period will receive equal consideration.

d. The SPO will:

(1) Provide affected employees with a list of employment openings, and corresponding wage rates, for which they have the right of first refusal;

(2) Provide affected employees information on the contractor's employment procedures and provide assistance, if requested, in applying for employment openings with the contractor;

(3) Provide answers to questions from employees on their right of first refusal for employment openings on the contract;

(4) Advise employees that they must apply for employment openings with the contractor to exercise their right of first refusal; and

(5) Inform employees that if they apply for employment openings with the contractor, they should notify the COTR so he/she can monitor the contractor's compliance with this provision.

e. Employees will have from the contract award date until ninety (90) days after the contractor assumes operational responsibility to exercise their right of first refusal. However, this time frame will be separated into two phases. The first phase will be from contract award date until fifteen (15) working days before the contract assumes operational responsibility. During this phase, employees will be afforded the right of first refusal for all initial employment openings. Contractor recruiting for employment openings during this time frame will be restricted to the adversely affected employees. During the last fifteen (15) working days of the transition period, the contractor will not be obligated to restrict employment openings to these employees, but may recruit from any source. This is necessary to enable contractors to fill any initial employment openings, that may exist, after considering all adversely affected employees, to ensure they have a fully staffed workforce before assuming operational responsibility. It is also necessary to preclude claims from contractors who may contend that they are unable to meet their contractual responsibilities because the Government interferred with their capability to become fully staffed prior to assuming operational responsibility. The second phase will extend from the date the contractor assumes operational responsibility through the first ninety (90) days of contract performance. During this time frame, all adversely affected employees will be entitled to the right of first refusal for any additional employment openings. Employees who have not previously exercised their right of first refusal, but desire to do so during this period should submit their employment application to the personnel office who will then foward them to the contractor.

f. Determination on whether an adversely affected employee is qualified for an employment opening on the contract will be made by the CO. The CO should make this determination jointly with the COTR and SPO. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening on the contract shall be considered qualified for that job. The CO's determination shall be final and binding on all parties.

7-7. Monitoring the Contractor's Compliance with the Right of First Refusal Provision.

a. Monitoring the contractor's compliance with the right of first refusal provision will be the responsibility of the COTR.

b. The COTR will compile a list of all employees who applied for employment with the contractor; and establish a follow-up procedure for feedback on employees who applied for employment with the contractor.

c. The COTR should also coordinate with the SPO in developing the reporting requirements for contractor's to report their compliance with this provision.

d. The COTR should carefully monitor the reporting requirements of the contractor, and notify the CO of any infractions. If the contractor fails to comply with this provision, the CO and COTR should meet with the contractor and take any action deemed appropriate.

7-8. Severance Pay Procedures.

a. Employees who are separated by a RIF as a result of an A-76 cost study, that who are otherwise entitled to severance pay, will be afforded that entitlement under the provisions of FMP Supplement 990-2, Book 550, with the following exceptions:

(1) Employees who are offered comparable employment with the contractor

on or before the day of conversion to contract performance, whether they refuse or accept the offer are not entitled to severance pay.

(2) Employees who accept employment with the contractor, whether or not a comparable offer, prior to conversion to contract performance are not entitled to severance pay.

(3) Employees who accept employment with the contractor within 90 days of separation will have their severance pay eligibility terminated effective the day they begin employment with the contractor.

(4) Employees who are entitled to an immediate annuity (including a reduced annuity) at the time of separation are not entitled to severance pay.

(5) Employees assigned to an appointment with a definite time limitation (temporary appointment) are not entitled to severance pay.

b. Employees may decline an offer of comparable employment with the contractor after the conversion to the contract performance day without affecting their severance pay eligibility.

c. The SPO will determine eligibility of severance pay. Denial of severance pay on the basis of declining a comparable offer with the contractor will be done only by the NOAA Personnel Director.

d. The SPO will give the COTR, no later than three (3) days after the start of contract performance, the names of all employees who have been or will be separated as a result of conversion to contract who are eligible for severance pay. The COTR will give the SPO the names of all separated employees who have been hired by the contractor before the start of and within ninety (90) days of contract performance as the names are received from the contractor.

e. Actual severance pay data will be compiled and provided to the Staff Organization Coordinator as required for the A-76 after action reports.

7-9. Determination of Comparable Offers of Employment from Contractors.

a. The determination of comparable offers must be made by the SPO. Any questions regarding the determination of comparable offers from a contractor should be addressed to the NOAA Personnel Director and the Staff Organization Coordinator.

b. A comparable offer of employment does not mean an offer equal to the employee's previous position.

c. Determination of comparable employment is not limited to an offer of equal pay and leave. It must include an evaluation of total compensation, i.e., salary, leave and holidays, health and life insurance benefits, profit sharing, stock options, etc.

d. An employment offer will be considered comparable if the total compensation value of the contractor's offer is at least 95% of the total compensation value provided by the employee's previous position.

e. A-76 experience has been that in almost all instances where the contractor makes an employment offer, it has not constituted a comparable offer. However, the determination of a comparable offer must be decided on an individual basis.

f. The following methodology will be used in determining comparability of contractor offers. It is based on an evaluation between the total compensation value of the contractor's offer and the total compensation value of the employee's previous position.

(1) Compare the annual salary offered by the contractor to the current salary of the employee's previous position. If the salary offered is less that 85% of the employees' current salary, the contractor's offer will not be considered a comparable offer. This determination of comparability on salary alone is based on the assumption that the value of the contractor's benefits would not be in excess of 10% of the value of the Government's benefits to attain the 95% level required for a comparable offer.

(2) If the contractor's salary offer is at least 85% of the employee's current salary, an evaluation of the contractor's and Government's benefits must be included in the total compensation evaluation to determine the comparability of the contractor's offer.

(3) Determine the value of the Government's total benefits to the employee as follows:

Step 1. Compute the retirement benefit value by mulitplying the employee's base annual salary by 7.0%; and then multiply the base annual salary (up to the FICA limitation - $37,500 for calendar year 1984) by 1.3%. Add the results of these two computations to determine the retirement value.

Step 2. Determine if the employee elected health insurance coverage. If the employee did, compute the health insurance value using the annual amount of the Government's contribution to the employee's health insurance plan. If the employee did not elect health insurance coverage, the health insurance value will be zero.

Step 3. Determine if the employee elected Government life insurance. If the employee did, compute the life insurance value by using the annual amount of the Government's contribution (basic coverage only) to the employee's life insurance policy. If the employee did not elect Government life insurance, the life insurance value will be zero.

Step 4. Determine the value of annual and sick leave and holidays. First, determine the employee's annual leave category (15, 20, or 26 day category). Compute total paid compensation days by adding together the number of annual days to 13 sick leave days and 9 holidays. Second, determine the daily salary rate by dividing the annual salary by 260.

Compute the value of total compensation days by multiplying the daily salary rate by the total compensation days computed above.

Step 5. Compute the value of Federal employment worker's compensation and unemployment benefits by multiplying the employee's annual base salary by 1.5%.

(4) Compute the Government total compensation value by adding the benefit values computed in (3) Steps 1 through 5 above to the employee's current annual base salary.

(5) Determine the value of the contractor's total benefits to the employee as follows:

Step 1. Compute the social security retirement benefit by multiplying the contractor's salary offer (up to the FICA limitation $37,500 for calendar year 1984) by 7.0%.

Step 2. If the contractor's offer provided for a health insurance plan, compute health insurance value by using the amount of the contractor's annual contribution.

NOTE: If the employee did not elect Federal health insurance coverage, compute the value of the contractor's health insurance benefit only if the contractor pays the entire amount of the health insurance policy (does not require employee contributions), otherwise the value of the contractor's health insurance benefit will be zero.

Step 3. If the contractor's offer provided for life insurance policy, compute the life insurance value by using the amount of the contractor's annual contribution.

NOTE: If the employee did not elect Federal life insurance coverage, compute the value of the contractor's life insurance benefit only if the contractor pays the entire amount of the life insurance policy (does not require employee contributions), otherwise, the value of the contractor's life insurance benefit will be zero.

Step 4. Determine the value of paid leave (annual and sick) and holidays. First, add together the number of paid leave days and paid holidays to determine the number of total paid compensation days. Next divide the salary offered by the contractor by 260 to compute the contractor's daily salary rate. Multiply the daily salary rate by the total paid compensation days to compute the value of total paid compensation days.

Step 5. Determine the percentage rate of the employees' salary the contractor is required to pay for worker's compensation and unemployment compensation.

NOTE: These rates are based on state laws and the employer's previous history and must be obtained from the contractor. Compute the value of worker's compensation and unemployment compensation benefits by multiplying the contractor's percentage rate by the annual salary offered by the contractor.

Step 6. Determine if the contractor's offer provided for stock options, profit sharing, etc. Compute the value of these benefits (only if it can be determined to be a tangible benefit to be realized by the employee) by using the amount contributed or paid by the contractor.

NOTE: If the contractor offers stock options, the value will be determined using the contractor's contribution, even if it requires matching contributions from the employee. Profit sharing value must be determined based on the contractor's actual proven experience.

(6) Determine the value of the contractor's total compensation value by adding the benefit values computed in (5) Steps 1 through 6 above to the contractor's annual salary offer.

(7) Divide the value of the contractor's total compensation value by the Government's total compensation value to compute the percentage value of the contractor's offer.

(8) If this percentage is 95% or greater, the contractor offer will be considered comparable. If it is less than 95%, the offer will not be considered comparable.

g. Examples for applying this methodology are provided at exhibits 7-1 and 7-2. Exhibit 7-1 provides an example of an offer deemed not comparable and Exhibit 7-2 provides an example of a comparable offer.

Example 1

Assumptions: An adversely affected employee receives an employment offer from a contractor. The contractor's offer includes an annual salary of $23,500, a health and life insurance policy, two weeks of paid annual leave, one week of paid sick leave, and nine paid holidays. The contractor is required by state law and previous experience to contribute 2.5% of an employees annual salary to provide worker's compensation and unemployment benefits. The current salary of the employee's previous position is $25,000. The employee is in the fifteen annual day leave category, has elected a high option family Blue Cross and Blue Shield Health Plan, and has Government life insurance.

Summary of Comparison

	Contractors Offer	Previous Position
Annual Salary	$ 23,500	$ 25,000
Retirement/FICA	1,645	2,075
Health Insurance	500	1,692
Life Insurance	360	56
Leave and Holidays	2,169	3,558
Worker's and Unemployment Compensation Benefits	588	375
Other Benefits	0	0
Total Compensation Value	$ 28,762	$ 32,756

Percentage Value of Contractor's Offer

To Employee's Previous Position Equals: 87.8% ($28,762 ÷ $32,756)

Exhibit 7-1

Detail Calculations

	Contractor's Offer	Previous Position
Annual Salary	$ 23,500	$ 25,000
Retirement/FICA	1,645	2,075

Government: 8.3% of current annual salary of employee's previous position = $2,075 ($25,00 x 8.3%)

Contractor: 7.0% of annual salary offer = $1,645 (23,500 x 7.0%)		
Health Insurance	500	1,692
Government: Based on Government's contribution = $1,692 ($65.05 biweekly x 26 pay periods)		
Contractor: Based on Contractor's annual contribution = $500		
Life Insurance	360	56
Government: Based on Government's contribution (base option only) $.08 per thousand coverage = $56 ($27,000 x .08 x 26 pay periods)		
Contractor: Based on Contractor's annual contribution = $360		
Leave and Holidays	2,169	3,558
Government: Based on dollar value of 37 days = $3,558 ($25,000 ÷ 260 x 37)		
Contractor: Based on dollar value of 24 days (10 annual, 5 sick, 9 holidays) = $2,169 ($23,500 ÷ 260 x 24)		
Worker's and Unemployment Compensation Benefits	588	375
Government: Based on 1.5% of current salary = $375 ($25,000 x 1.5%)		
Contractor: Based on the actual percentage rate contractor pays of 2.5% = $588 ($23,500 x 2.5%)		

Example 2

Assumptions: An adversely affected employee receives an employment offer from a contractor. The offer includes an annual salary of $23,500. In addition, the offer includes a health insurance and life insurance policy which the contractor pays the entire coverage, three weeks paid annual leave, two weeks paid sick leave, and nine paid holidays. The offer also includes a stock option plan where the contractor contributes one percent of the employee's salary, and a profit sharing plan where the contractor's past experience has shown employees have received an annual average of $500 per employee. The contractor's required contribution for worker's and unemployment compensation is 2.5% of the employee's annual salary. The current salary of the employee's previous position is $25,000. The employee is in the fifteen day annual category, has elected low option family Blue Cross and Blue Shield Health Plan, but has not elected a Government life insurance plan.

Summary of Comparison

	Contractor's Offer	Previous Position
Annual Salary	$ 23,500	$ 25,000
Retirement/FICA	1,645	2,075
Health Insurance	750	781
Life Insurance	360	0
Leave and Holidays	3,073	3,558
Worker's and Unemployment Compensation Benefits	588	375
Other Benefits	735	0
Total Compensation Value	$ 30,651	$ 31,789

Percentage Value of Contractor's Offer

To Employee's Previous Position Equals: 96.4% ($30,651 ÷ $31,789)

Exhibit 7-2

Detail Calculations

	Contractor's Offer	Previous Position
Annual Salary	$ 23,500	$ 25,000
Retirement/FICA	1,645	2,075
Government: Based on 8.3% of annual salary = $2,075 ($25,000 x 8.3%)		
Contractor: Based on 7.0% of annual salary = $1,645 ($23,500 x 7.0%)		
Health Insurance	750	781
Government: Based on Government's annual contribution = $781 ($30.05 biweekly x 26 pay periods)		
Contractor: Based on Contractor's annual contribution = $750		
Life Insurance	360	0
Government: Based on employee not electing life insurance = -0-		

Contractor: Based on Contractor contributing entire amount = $360		
Leave and Holidays	3,073	3,558
Government: Based on dollar value of 37 days = $3,558 ($25,000 ÷ 260 x 37)		
Contractor: Based on dollar value of 34 days = $3,073 ($23,500 ÷ 260 x 34)		
Worker's and Unemployment Compensation Benefits	588	375
Government: Based on 1.5% of current annual salary = $375 ($25,000 x 1.5%)		
Contractor: Based on 2.5% of annual salary = $588 ($23,500 x 2.5%)		
Other Benefits	735	0
Government: Based on no tangible benefits to employee = -0-		
Contractor: Based on 1% of salary for stock options = $235 ($23,500 x 1%) and average profit sharing of $500 (Based on proven contractor experience)		

7-10. Rebuttal Qualification Determination.

a. Qualification decisions on whether an employee is fully qualified for a position in the MEO or MECO will be made by the SPO.

b. Rebuttal on employee qualification by the appropriate supervisor will be limited to misapplication of qualification standards. Supervisors will be required to demonstrate misapplication of standards as part of the documentation supporting rebuttal.

c. All rebuttals on employee qualifications must be approved by the Organization Coordinator.

7-11. Special Placement Considerations for Adversely Affected Employees. The following special placement considerations will be afforded to all employees who are adversely affected or separated as a result of an A-76 cost study.

a. Priority Consideration. All employees with specific or general RIF notices will be provided priority consideration for lateral or lower graded positions by filing for advertised vacancies for which they are qualified. Such applicants who provide copies of the RIF notice will be considered before other applicants.

b. Reemployment Priority List (RPL). Career or career conditional employees who are to be separated by RIF or who have been separated by RIF will be registered on the RPL. They must be considered for reinstatement in subgroup order, (e.g., career veterans before career non-veterans) before transfers from other agencies, new appointments or other reinstatements can be made, unless they decline formal written offers. Career employees will receive such consideration for two years and career conditional employees will receive consideration for one year.

c. Priority Placement Program (PPP). Employees downgraded by a RIF will be registered in the PPP for a two year period following the downgrade. Once registered they must be considered for and may be promoted without competition to positions for which they qualify up to the grade level from which demoted. If the employee declines a written offer in their commuting area at their "lost" grade, retained grade/pay is terminated.

d. Interagency Placement Assistance Program (IPAP) and Displaced Employee Program (DEP). All employees separated will be enrolled in the IPAP and DEP programs.

e. Outplacement Assistance. Depending on the number and types of employees affected and their qualification and interests, as well the availability of resources and funds, NOAA personnel offices may provide a variety of outplacement services to employees affected by RIF. This may include contacts with and referral to other Federal agencies, job counseling, providing information about job opportunities, and instruction on the completion of SF-171's.

7-12. Conflict of Interest. Avoiding conflicts of interest is a personal responsibility imposed on Government employees by statute and regulation. Although this responsibility is personal, it directly affects the integrity of the entire A-76 cost study process. The following actions will be applied to ensure that conflicts and appearance of conflicts are avoided.

a. No individual who may benefit or may be adversely affected by the results of the cost study may serve as a Pricipal or Alternate Reviewer, or participate in the development of the management efficiency study, or development of the in-house cost estimate, or evaluation and selection of contractors' bid or offers other than in an assisting or advisory capacity.

b. No individual may participate in the evaluation and selection of contrators' bids or offers who has participated in the development of the in-house cost estimate or has knowledge of the MEO staffing level.

c. Individuals involved with the development of the management efficiency study or in-houst cost estimate will not discuss their activities with unauthorized persons. Unauthorized persons include persons outside the Government and Government personnel involved in acquistion duties or the evaluation of contractor bids or proposals related to the cost study. Also included is anyone whose knowledge of the in-house cost estimate could compromise the confidentiality of the in-house costs and the independence of potential contractors' bids or offers. This restriction will remain in effect until public announcement of the cost comparison decision and release of related material to directly affected parties. Public dissemination of the contents of the management efficiency study is restricted until the Organization Coordinator approves its release as a public document. Restriction of the contents of management efficiency study is necessary to preclude contractors from gaining an unfair competitive advantage over the in-house proposals for future similiar cost studies.

d. Individuals who participate in the appeal process will not discuss their activities with other than authorized Government persons responsible for completing the appeal process. This is necessary to ensure the integrity and independence of the appeal process.

e. Questions on conflicts and possible conflicts of interest should be addressed to the NOAA Assistant General Counsel for Enforcement and Litigation.

United States Senate
WASHINGTON, D.C. 20510

May 1, 1984

The Honorable Paul Laxalt
Chairman
Subcommittee on Commerce, Justice,
State, the Judiciary, and Related Agencies
S-146A, The Capitol
Washington, D.C. 20510

Dear Paul:

I am writing to comment briefly on the important fisheries portion of the National Oceanic and Atmospheric Administration's budget for Fiscal Year 1985 and to thank you and the other committee members for your demonstrated support of our nation's first industry.

The Subcommittee has before it today a fisheries budget proposal that shows limited understanding of the complexities involved in managing our nation's fisheries resources. Many of the proposed reductions and program terminations would derail constructive resource assessment, conservation, and management efforts that have been evolving for some time.

In 1977, when the United States began to manage the fisheries resources that are found within 200 miles of our coasts, the task at hand was enormous. Since that time, the National Marine Fisheries Service (NMFS), the Fisheries Management Councils, and the Fisheries Development Foundations have been grappling with questions of optimum sustainable yield, best available scientific information, total allowable level of foreign fishing, domestic annual harvest and processing, full utilization, domestic and overseas market expansion, consumer education, and many other concepts whose answers are elusive and require years of experience, experimentation, and expertise to be resolved. Our understanding has greatly improved since 1977 but the job is far from complete.

Congress has given NOAA the responsibility of conserving and managing fishery resources because we have recognized that these resources contribute significantly to the food supply, economy, and health of the Nation. Our fishing industry has one of the greatest potentials for growth of all of our domestic industries. The develpoment of the U.S. fishing industry is and should continue to be a matter of national priority.

With these thoughts in mind, it is my hope that the Subcommittee will act again to restore the necessary funding to NOAA's critical fisheries programs.

Specifically, funds are needed to maintain NMFS' ability to perform the research that aids the Fishery Management Councils' and state fisheries agencies' understanding of such complex problems as future fishery yields, stock enhancement and restoration, resource development, habitat conservation, and disease control. NMFS research laboratories like those in Gloucester, Massachusetts, Milford, Connecticut, and Oxford, Maryland are important for the information and analysis that they provide to fishery managers and industry members and they should remain in operation.

In addition, it is extremely important that funds for the Fisheries Management Councils be restored, at a minimum, to the levels that Congress provided in Fiscal Year 1983. Although some have justified the huge reductions that have been proposed in the Councils' budget with the view that the Councils' function has shifted from one of plan development to one of plan implementation, this is simply not the case. In fact, these unique bodies, which allow for direct industry and public contributions to federal fishery management, would be put out of business by cuts of the magnitude that have been suggested.

Many important fishery management plans are being developed and improved and difficult decisions are being made concerning issues such as joint venture policy and foreign fishing allocations by the Councils today. These facts indicate the organic nature of the Councils' work and the importance of continued federal support. NOAA would sorely feel the loss of these cooperative and knowledgeable councils. I do not believe that NOAA alone could sufficiently satisfy the fishing industry so that the agency could successfully carry out the Councils' role in Congress' important fishery conservation and management mandate.

The application of a significant portion of Saltonstall-Kennedy (S-K) funds to projects of benefit to the fishing industry also continues to be a priority, in my opinion.

Among other things, S-K funds provide an important basis of support for the Fisheries Development Foundations. The Foundations serve as an excellent example of industry-government cooperation in support of the growth of a valuable domestic industry. In time, the Foundations are expected to be supported entirely by industry contributions but they require additional S-K support today so that they may continue their contribution to the full utilization of our nation's fishery resources and to the expansion of the economic power of our fishing industry.

Finally, I urge the Subcommittee to see to it that the nearly $90 million that has accumulated in the Fisheries Loan Fund not be diverted to the operating budget of any agency other than the National Marine Fisheries Service. Like the S-K fund, the Fisheries Loan Fund's revenues are derived from programs which support the U.S. fishing industry and the benefits of that money should accrue only to the industry and the agency that is charged with the industry's well-being.

I appreciate this opportunity to make my views know to the Subcommittee and thank you in advance for the support that I know you will continue to provide to these important programs.

With best personal regards, I am

Sincerely,

William S. Cohen
United States Senator

MARINE MAMMAL COMMISSION

STATEMENT OF DR. WILLIAM E. EVANS, CHAIRMAN, MARINE MAMMAL COMMISSION

ACCOMPANIED BY
JOHN R. TWISS, JR., EXECUTIVE DIRECTOR
DR. ROBERT J. HOFMAN, SCIENTIFIC PROGRAM DIRECTOR
DONALD C. BAUR, GENERAL COUNSEL

BUDGET REQUEST

Senator WEICKER. The Marine Mammal Commission. Is there anyone from the Commission out there? We have the Marine Mammal Commission. We have the Chairman of the Commission.

You may introduce your colleagues, Dr. Evans. The Marine Mammal Commission is requesting $648,000, a decrease of $281,000 from the 1984 level which comes as distressful news to all Flipper fans in the United States and more particularly this Chairman. When I see what is done, see a budget cut by one-third of such a small agency that has done so much good, really, really in all the opinions, not just this Nation, but the world, I tell you.

I hate to do it. Anyway, you are the fellow that has to justify it.

Dr. EVANS. Good afternoon, Mr. Chairman. My name is William E. Evans, and I am the new Chairman of the Marine Mammal Commission.

With me today are: John R. Twiss, Jr., the Executive Director; Robert J. Hofman, the Scientific Program Director; and Donald C. Baur, General Counsel. It is a pleasure to appear before you to present a brief statement.

Senator WEICKER. You can go ahead and summarize your statement, incidentally.

Dr. EVANS. I will, sir.

FISCAL YEAR 1984 TO DATE

In our submission to this committee last year, we said that in 1984 the Commission would focus on: implementing the Hawaiian Monk Seal Recovery Plan; developing and implementing an agreed plan for establishing one or more sea otter colonies outside the present sea otter range in California; reducing marine mammal mortality in active and discarded fishing gear; developing data and procedures, including measures to mitigate marine mammal/fishery conflicts, for cooperatively managing fisheries and marine mammals in the Bering Sea and elsewhere; and helping to negotiate international agreements to protect marine mammals, including the development of an ecologically sound regime to govern mineral exploration and exploitation in the Antarctic; expediting return of marine mammal management to the State of Alaska and other states; and improving planning and coordination of marine mammal research being conducted or supported by the National Marine Fisheries Service, the Fish and Wildlife Service, and other organizations.

To meet these commitments this year, a number of steps have already been taken in the described areas. These are described in my complete testimony which I would like to submit for the record. With your approval, I would simply like to move on to our objectives for fiscal year 1985.

OBJECTIVES FOR FISCAL YEAR 1985

We are now meeting our statutory responsibilities and will continue to do so in fiscal year 1985.

To do this, we recommend to the Secretaries of Commerce, Interior, and State needed actions to protect and conserve marine mammals; we help coordinate academic, State, Federal and international research and study efforts to increase yields and prevent wasteful, duplicative research; we manage and publish the results of a research and studies program in which specific problems bearing on marine mammal protection and conservation are addressed; we recommend to the Secretaries of Commerce and Interior actions on the issuance of permits to take marine mammals; we make recommendations to the Secretaries of Commerce and Interior on waivers of the moratorium, the resumption of state management, and related matters; and we participate in and make recommendations with respect to U.S. posture in international negotiations affecting marine mammals.

While meeting our statutory responsibilities in fiscal year 1985, we shall focus on: effective implementation of the Hawaiian Monk Seal Recovery Plan, the Southern Sea Otter Recovery Plan, and the Convention on the Conservation of Antarctic Marine Living Resources; assessment and mitigation of the possible indirect as well as the direct effects of offshore oil and gas development on marine mammals and their habitat; development of an ecologically sound regime to govern exploration and exploitation of mineral resources in the Antarctic; assessing and preventing or reducing the incidental take of marine mammals in lost or discarded fishing gear and other debris which has become a very serious problem; continuing efforts to expedite return of marine mammal management authority to states; and improving planning and coordination of marine mammal research being conducted or supported by the Minerals Management Service, the National Marine Fisheries Service, the Fish and Wildlife Service, and other organizations.

Available funds will be used for program reviews, planning meetings, and other activities necessary to identify possible problems and solutions thereto. As in the past, we shall work closely with involved States, Federal agencies, and international organizations.

COMMISSION DOMESTIC POLICIES

The Commission, among other things, has been instrumental in: developing domestic policies to protect and conserve marine mammals; facilitating development and providing guidance with respect to the negotiation of international agreements affecting marine mammal conservation; developing biologically sound and legally constructive approaches to requests for waivers of the moratorium; working with State and other agencies to facilitate marine mammal conservation and protection; assuring that research needs are defined clearly and that research programs are planned and coordinated so as to obtain needed information as quickly and as economically as possible; objectively exercising its overview responsibilities to assist agencies in addressing critical issues; ensuring that agencies seek to enforce the provisions of the Act; and providing an overview of activities conducted pursuant to the Act.

For fiscal year 1985, we are requesting $648,000 to allow the Commission to continue this important work.

Thank you very much. I and members of the staff are available to answer any questions you may have.

[Dr. Evans' statement follows:]

PREPARED STATEMENT OF WILLIAM E. EVANS, PH.D.
CHAIRMAN
MARINE MAMMAL COMMISSION

Good afternoon, Mr. Chairman and Members of the Committee. My name is William E. Evans, and I am Chairman of the Commission. With me today are: John R. Twiss, Jr., Executive Director; Robert J. Hofman, Scientific Program Director; and Donald C. Baur, General Counsel. It is a pleasure to appear before you to present this brief statement.

FY 1984 to Date

In our submission to this Committee last year, we said that in 1984 the Commission would focus on: implementing the Hawaiian Monk Seal Recovery Plan; developing and implementing an agreed plan for establishing one or more sea otter colonies outside the present sea otter range in California; reducing marine mammal mortality in active and discarded fishing gear; developing data and procedures, including measures to mitigate marine mammal/fishery conflicts, for cooperatively managing fisheries and marine mammals in the Bering Sea and elsewhere; helping to negotiate international agreements to protect marine mammals, including the development of an ecologically-sound regime to govern mineral exploration and exploitation in the Antarctic; expediting return of marine mammal management to the State of Alaska and other states; and improving planning and coordination of marine mammal research being conducted or supported by the National Marine Fisheries Service, the Fish and Wildlife Service, and other organizations.

To meet these commitments this year, a number of steps have already been taken in the described areas.

With regard to the Hawaiian monk seal, the Commission reached agreement in 1983 with the National Marine Fisheries Service on nine tasks to be undertaken as matters of priority to implement the Hawaiian Monk Seal Recovery Plan. The Commission subsequently transferred the $150,000 appropriated by this Committee for Hawaiian monk seal research and management activities in FY 1983, to the National Marine Fisheries Service to partially support the mutually agreed upon research and management activities.

To follow up on this investment, the Chairman of the Commission's Committee of Scientific Advisors met with the Hawaiian Monk Seal research staff in Honolulu in early February 1984 to review the results of 1983's research and management activities and to up-date the Recovery Plan.

Efforts to develop and implement an agreed plan for establishing one or more sea otter colonies outside the present sea otter range in California are proceeding, but have been hampered by delays in completing the biological, ecological, legal, and socio-economic analyses needed to select and evaluate potential translocation sites. To expedite matters, the Commission held a general program review in California in August 1983. Based upon consultations at that meeting with industry and environmental representatives, California Department of Fish and Game staff, and Fish and Wildlife Service staff, we made certain recommendations to the Service by letter of 14 September 1983. We recommended that the Service take steps to complete an updated recovery plan, draft a comprehensive work plan, and draft a translocation plan that could be subjected to legal, environmental, and economic evaluation and assessment. The Fish and Wildlife Service concurred with the Commission's recommendations and, during subsequent discussions, Service representatives indicated that the Southern Sea Otter Recovery Plan would be up-dated in final form and that comprehensive work and tranlocation plans would be put in final draft form and provided to the Commission and other interested parties for review in May 1984.

With regard to reducing marine mammal mortality in active and discarded fishing gear, we recommended in November 1983 that the National Marine Fisheries Service convene an international group of scientists and technical experts to assess and describe steps to prevent or reduce entanglement of marine mammals, birds, turtles, and non-target fish species in lost and discarded fishing gear and other marine debris. We also provided support to convene a steering group to plan the workshop which will be held in Honolulu in November 1984. This past October, the Commission, the North Pacific Fishery Management Council, the National Marine Fisheries Service, and the Alaska Sea Grant Program cooperatively supported a workshop to assess interactions among marine mammals and commercial fisheries in the southeast Bering Sea. In November 1983, we recommended that the National Marine Fisheries Service take steps to better assess and reduce the incidental take of harbor porpoise in gill and trammel net fisheries along the central California coast. We also convened a meeting to determine steps that may be necessary and possible to better document and/or mitigate apparent marine mammal-fishery conflicts in Hawaii.

We continue to provide biological expertise relative to a number of international agreements and negotiations. Dr. Hofman, our Scientific Program Director, participated in the meetings of the Commission and the Scientific Committee for the Conservation of Antarctic Marine Living Resources in August and September 1983. In 1984, he also participated as a member of the U.S. delegation in intergovernmental efforts to negotiate an ecologically-sound regime to govern the exploration and exploitation of mineral resources in the Antarctic. Besides formally representing U.S. scientific interests here and abroad, the Commission, in consultation with the Department of State, the National Science Foundation, and the National Marine Fisheries Service, organized and convened meetings of U.S. scientists in December 1983 and April 1984 to begin preparations for the September 1984 meeting of the Commission and Scientific Committee for the Conservation of Antarctic Marine Living Resources.

We have recently learned that the State of Alaska has undertaken an intensive internal review of its draft request for return of marine mammal management authority. After the proposal has been subjected to broad discussion in Alaska and some consensus on appropriate action reached, the State will act. We have budgeted funds from this year's appropriation to help the State examine a variety of questions related to the status of various populations. Furthermore, we are planning to hold the next meeting of the Commission and its Committee in Fairbanks to consider this and related issues.

Efforts to improve planning and coordination of marine mammal research programs have been productive. The Commission has reviewed and, when appropriate, provided comments, suggestions, and recommendations on programs being conducted and planned by the National Marine Fisheries Service, the Fish and Wildlife Service, and the Minerals Management Service. When appropriate, the Commission has involved representatives of states, industries, and public interest groups to facilitate program planning, coordination, and review.

These and other efforts are described in our Annual Report which we have provided you.

Objectives for 1985

We are meeting our statutory responsibilities and will continue to do so in Fiscal Year 1985. Among these are:

- to recommend to the Secretaries of Commerce, Interior, and State needed actions to protect and conserve marine mammals;

- to help coordinate academic, state, Federal, and international research and study efforts to increase yields and prevent wasteful, duplicative research;
- to manage and publish the results of a research and studies program in which specific problems bearing on marine mammal protection and conservation are addressed;
- to recommend to the Secretaries of Commerce and Interior actions on the issuance of permits to take marine mammals;
- to make recommendations to the Secretaries of Commerce and Interior on waivers of the moratorium, the resumption of state management, and related matters; and
- to participate in and make recommendations affecting the United States' posture in international negotiations affecting marine mammals.

While meeting our statutory responsibilities in FY 1985, we shall focus on: effective implementation of the Hawaiian Monk Seal Recovery Plan, the Southern Sea Otter Recovery Plan, and the Convention on the Conservation of Antarctic Marine Living Resources; assessment and mitigation of the possible indirect as well as the direct effects of offshore oil and gas development on marine mammals and their habitat; development of an ecologically-sound regime to govern exploration and exploitation of mineral resources in the Antarctic; assessing and preventing or reducing the incidental take of marine mammals in lost or discarded fishing gear and other debris; continuing efforts to expedite return of marine mammal management authority to states; and improving planning and coordination of marine mammal research being conducted or supported by the Minerals Management

Service, the National Marine Fisheries Service, the Fish and Wildlife Service, and other organizations.

Available funds will be used for program reviews, planning meetings, and other activities necessary to identify possible problems and solutions thereto. As in the past, we shall work closely with involved states, federal agencies, and international organizations.

Conclusions

The Commission, among other things, has been instrumental in: developing domestic policies to protect and conserve marine mammals; facilitating development and providing guidance with respect to the negotiation of international agreements affecting marine mammal conservation; developing biologically-sound and legally constructive approaches to requests for waivers of the moratorium; working with state agencies to facilitate marine mammal conservation and protection; assuring that research needs are defined clearly and that research programs are planned and coordinated so as to obtain needed information as quickly and as economically as possible; objectively exercising its overview responsibilities to assist agencies in addressing critical issues; ensuring that agencies seek to enforce the provisions of the Act; and providing an overview of activities conducted pursuant to the Act.

For FY 85, the Commission requests $648,000 to allow the Commission to continue this important work.

FUNDING SPECIFICS

Senator WEICKER. With the funds provided for the fiscal year 1985 budget, are there any special studies or research projects that the Commission feels are important that cannot be funded?

Dr. EVANS. The planned program that we have at the present time covers all of the issues that we have mentioned in the testimony. The major thing the funding level does is determine the level of effort that is put on each one of these. Of course, the higher the funding level, the more intensive these efforts in various programs.

Senator WEICKER. If further studies are to be initiated by the Commission to investigate the entanglement problem, are there sufficient funds in the President's request to adequately address the request and not cut into present studies?

Dr. EVANS. At the present time, and Mr. Twiss had mentioned earlier that we had some research that is needed prior to the program that is planned for November, which is an intensive workshop. During the workshop, we are going to address and define what those problems are. Before the actual scope or the amount of funding necessary to really adequately address this problem can really be handled, I think it is necessary for us to have the results of the workshop. I think I would like to refer Mr. Twiss to go into a little bit more detail on that if that is possible.

Mr. TWISS. The workshop, Senator Weicker, that Dr. Evans just mentioned is one that we first proposed in late 1982. It has now been agreed that the workshop will be held in November, and that the Japanese, the Taiwanese, the Koreans, the Soviets and the Canadians will be participating.

Preparations for the workshop have gotten to the point where there is agreement that the workshop will be be held, some of the steps necessary to develop a successful workshop have been taken, and much of the work necessary to make it a really successful workshop has yet to be undertaken. We have recommended to the National Marine Fisheries Service a variety of additional tasks that need to be started and in some instances completed before the workshop is held so as to make it yield the greatest possible amount of information and specific recommendations.

My guess is that if NOAA were to invest between $50 and $100,000 between now and November, they would have a workshop that would give them manyfold the return that they could otherwise expect.

ADDITIONAL FUNDS FOR FY 1985

As far as fiscal year 1985 goes, although there are discussions about a need for $2 to $3 million, the focus and use to which that money will be put has not yet, at least I don't feel, been well and adequately described. There is obviously a need for additional money in 1985, but it would seem to me that going that high in 1985 might be premature. I would expect the workshop results will be out in February or March of 1985, and I would also expect them to describe a comprehensive research and management plan that we and other nations could participate in.

HAWAIIAN MONK SEAL PROGRAM

Senator WEICKER. What is the minimum amount of funding that would be necessary to maintain a strong research program on the Hawaiian Monk Seal?

Dr. EVANS. The Chairman, Dr. Chapman, of our Committee of Scientific Advisors, has recently been involved in planning discussions for the 1985 Hawaiian Monk Seal research program, and our recommendation is based upon that review and other available information. We believe that $325,000 is necessary for a minimum program.

Senator WEICKER. Last, we have questions for response to the record.

NORTH ATLANTIC RIGHT WHALE POPULATION

What is the status of the North Atlantic right whale population, and are there any special studies planned for study on the animal in 1985?

Dr. EVANS. Senator, as we all are aware, the right whale is probably the most endangered species of whale. There was a workshop in 1983, and there has been some other activity on it. What I would like to do is have Dr. Hofman give you a little bit more detail on what some of these programs are and what their status is at the present time.

Dr. HOFMAN. The direct answer to your question, Senator, relative to the North Atlantic population, is that I know of no special studies planned for fiscal year 1985 although I think the need is there.

Senator WEICKER. What will that run?

Dr. HOFMAN. As Dr. Evans indicated, a workshop was held at the New England Aquarium approximately a year ago and research needs were identified. The Commission has also been sponsoring a right whale sighting network off our southeast coast from Cape Hatteras to northern Florida, because that may be an important breeding ground that has yet to be defined. To properly lay out and define this program's needs, we are probably talking on the order of about $50,000. The actual program needs would be considerably in excess of that.

I think the threats to the population come from things like offshore oil and gas development and fisheries development, and I think the actual program should be under the Minerals Management Service or the line agency with authority, the National Marine Fisheries Service.

SUBMITTED QUESTIONS

Senator WEICKER. Thank you very much. I appreciate your testimony. Additional questions will be inserted in the record at this point.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Laxalt

RESEARCH

QUESTION: For the record, please provide an explanation (including individual funding levels) of the research being performed by the Marine Mammal Commission in FY 1984.

ANSWER: The Commission's FY 84 research budget was augmented by approximately $300,000 by this Committee, and those funds have been or will be used as follows:

$48K Base Funding

1.	Annual Survey of Federally-Funded Research	3,000
2.	Publish reports of research studies undertaken with Commission funds and maintain reference library	8,360
3.	Inventory and up-date contract files, reports, etc.	6,000
4.	Prepare 1983 Annual Report	4,700
5.	Evaluate Environmental Impact Statements concerning OCS lease sales, Fishery Management Plans, etc.	5,000
6.	Evaluate the status of stocks reports and related documents concerning California sea otters, marine mammals affected by return of management to Alaska, the yellowfin tuna purse seine fishery, etc.	5,440
7.	Initiate preparation of a wider Caribbean Manatee Recovery Plan	5,000
8.	Determine the extent and possible need to mitigate marine mammal/fishery interactions in Hawaii through a workshop with prepared background papers	10,500
		$48,000

$296 Congressionally directed research

A. California sea otter

*1.	Support Southern sea otter recovery activities coordinator if hired from outside the Fish and Wildlife Service	40,000

---

*This $40,000 will be redirected towards the support of sea otter research inasmuch as the Fish and Wildlife Service has just named a Service employee to the position.

2.	Continue observations of gill and trammel net hauls in and near Morro Bay --------------------	17,938
3.	Up-date report on oil spill risks -	4,275
4.	Compile and evaluate existing data concerning environmental contaminants in sea otters --------	7,200
5.	Continue photographic surveys of kelp beds ------------------------	9,300
		78,713

B. Marine Mammals in Alaska

1.	Facilitate development of necessary research and management programs to conserve marine mammals in Alaska ---------------------------	38,000
2.	28 and 29 June 1984 workshop on methods for determining optimum sustainable population levles -----	5,000
3.	Help prepare status of stocks reports -------------------------	15,000
		58,000

C. Marine Mammal/Fishery Interactions

1.	Support of steering group to organize net entanglement workshop ------------------------	4,000
2.	Identification and analysis of domestic and international laws and regulations to control the discarding of fishing gear and other debris at sea --------------	6,500
3.	Partial support for "International Symposium and Workshop on the Biology of Fur Seals" ------------	1,500
4.	Trial systematic surveys to assess types, quantities, and rates of net accumulation on selected Alaskan beaches ----------	4,000
5.	Evaluate available information on harbor porpoise mortality in areas of gill or trammel net fisheries in California --------------------	2,000
6.	Expand and coordinate marine mammal mortality assessment programs in San Mateo, San Francisco, and Marin Counties -------------------	10,000?
7.	Assess incidental take of pilot whales in fisheries in the California Channel Islands area ---	4,000

8.	Continue Channel Island pinniped studies	8,000
		$40,000

D. Endangered Cetaceans

1.	Undertake pilot study to assess possible use of mitochondrial DNA for determining discreteness of selected whale populations	15,000
2.	Continue right whale population surveys in the northeast	7,280
3.	Determine critical breeding and feeding areas for right and other endangered whales off the east coast of the U.S.	10,000?
4.	Begin development of a recovery plan for endangered whales and/or compilation of data for stock assessments	10,000?
5.	Symposium/workshop(s) on whale watching	6,000
		$48,280

E. Antarctic Seals and Whales

1.	Partially support two meetings of the *ad hoc* Scientific Working Group to review and recommend follow-up action for the July 1983 meeting on non-living resources and the second meetings of the Commission and Scientific Committee under the Convention on the Conservation of Antarctic Marine Living Resources (in cooperation with Commerce and the National Science Foundation)	7,500
2.	Support preparation of educational, technical and scientific papers for the forthcoming meetings bearing on Antarctic living and non-living resources (in cooperation with Commerce, the National Science Foundation, and State)	5,500
3.	Develop a plan for detecting and monitoring the effects of krill harvesting on marine mammals and other non-target species	50,000
4.	Partially support preparation of an Atlas of Specially protected Areas in Antarctica (in cooperation with England, Australia, and other Antarctic Treaty nations)	3,000

5. Partial support of conference on development and operation of the Antarctic Treaty System -----------	5,000
	$71,000

QUESTION: How does the Commission intend to address the problem of marine mammal net entanglement in fiscal years 1984 and 1985? What does the Commission believe should be done in this area in the coming fiscal year?

ANSWER: In general terms, the Commission intends to continue to maintain pressure upon the National Marine Fisheries Service so as to encourage the Service to: (1) undertake the necessary steps as described in the Commission's 18 November 1983 letter to properly prepare for and convene an international workshop of scientific and technical experts; (2) have the proceedings of the workshop promptly and professionally reported as suggested by the Commission; (3) develop, based upon actions taken as a result of Commission recommendations and the findings of workshop participants, comprehensive international research and management plans; and (4) take such steps as may be necessary to see those plans implemented. In addition, the Commission will support: the activities of the Workshop Steering Group; the undertaking of beach surveys in Alaska to help assess the magnitude of the problem; and the preparation of a comprehensive review and analysis of all domestic and international authorities that might be used to curb the loss and discard of fishing gear and other non-degradable debris.

A copy of the 18 November 1983 letter follows.

MARINE MAMMAL COMMISSION
1625 EYE STREET, N. W.
WASHINGTON, DC 20006

18 November 1983

Mr. William G. Gordon
Assistant Administrator for Fisheries
National Marine Fisheries Service
NOAA/Department of Commerce
Washington, D.C. 20235

Dear Mr. Gordon:

As you know, the Commission has long felt that entanglement of marine mammals in lost and discarded commercial fishing gear and other debris is an extremely serious problem which must be addressed. To this end, the Commission has made a number of written and verbal recommendations, suggestions, and offers of financial assistance within the context of commenting on issues related to the North Pacific fur seal, the Hawaiian monk seal, and a workshop to be focused on net entanglement.

On September 27, 1983, the National Marine Fisheries Service hosted a meeting with representatives of the governments of Canada, Japan, Korea, Taiwan, and the Union of Soviet Socialist Republics. At that meeting, it was agreed that it would be appropriate to convene a non-governmental, international workshop of scientific and technical experts to examine the issues and make recommendations thereon. The terms of reference discussed at that meeting were elaborated at the request of the participants and sent to them (see enclosure).

Since it now appears that the point has been reached of actually planning for and convening a workshop in Hawaii, the Marine Mammal Commission again wishes to restate its offer of the past two years to contribute to the support of such a workshop. To this end and specifically for the convening of a Steering Group, the Commission would be pleased to immediately transfer $4,000 to the National Marine Fisheries Service.

Further, the Commission, based on consultations with its Committee of Scientific Advisors on Marine Mammals as well as discussions with members of the fishing community, the National Oceanic and Atmospheric Administration, the Department of State, and the National Marine Fisheries Service, makes the following recommendations:

(1) that responsibility for the conduct of the workshop be formally and promptly assigned to the Honolulu Laboratory of the Southwest Fisheries Center and that interested persons be so advised;

(2) that such sums of money as may be determined to be necessary for the workshop (see (4) below) be immediately transferred to the Southwest Fisheries Center/Honolulu Laboratory;

(3) that a Steering Group be immediately established and convened for the purposes described in (4) below, and that the Group's membership include Mr. Jim H. Branson, Dr. Douglas G. Chapman, Dr. Charles W. Fowler, Dr. William G. Gilmartin, Mr. John Henderson, Dr. Robert J. Hofman, Mr. Joe Scordino, and Mr. Richard S. Shomura;

(4) that the Steering Group: a) choose a chairman for the workshop, agree upon dates specific, and assign responsibility to persons for the management of workshop preparations, conduct of the workshop proper, and the

undertaking of followup actions; b) reach final agreement on the terms of reference for the workshop; c) prepare a detailed agenda for the workshop which sets forth the topics for discussion, the titles of invited papers, the names of those who will be asked to present the papers, and the participants for any panel discussions; d) develop a list of other invitees from the United States and abroad to assure the best possible level of scientific and technical participation in the workshop; e) prepare detailed total cost estimates (see (2) above) for the meeting so that such an amount can be immediately transferred to the Southwest Fisheries Center/Honolulu Laboratory by the National Marine Fisheries Service; and f) prepare a detailed plan for following up on the workshop;

(5) that the National Oceanic and Atmospheric Administration's Office of the General Counsel identify and evaluate all domestic and international authorities that might be used to prevent further dumping of gear and debris and to facilitate the recovery of gear fragments and other discarded material already in the sea;

(6) that the Service request the Department of State to take such steps as may be necessary to gather similar information with respect to the domestic authorities of other involved countries including such statutes and regulations as may exist to implement the provisions of relevant international agreements;

(7) that the Service either undertake or cause to be undertaken the compilation, summarization, and evaluation of all published data on entanglement of fur seals, monk seals, other marine mammals, sea turtles, sea birds, fishes, and any other species in lost or discarded fishing gear;

(8) that the Service take such steps as are necessary and appropriate to: analyze collected fragments and other debris; collect and analyze relevant data and information provided on materials collected or sighted; conduct research (either directly or under contract) on ways in which gear may be effectively marked; and provide advice and recommendations on marking, mitigating measures, and such other matters as may be appropriate and necessary;

(9) in this regard, that the Service undertake or cause to be undertaken such studies as would lead to describing ways in which net might best be marked so as to show its provenance in the event of recovery at sea or on beaches;

(10) that the Service enter into formal agreements with the U.S. Coast Guard, the U.S. Navy, the U.S. Fish and Wildlife Service, and appropriate agencies within the States of Alaska, California, Hawaii, Oregon, and Washington to ensure that samples of netting and other debris which are collected by these agencies be given to the National Marine Fisheries Service for evaluation;

(11) that the Service enter into formal agreements with appropriate state and Federal agencies with respect to the collection, compilation, and analysis of data and information gathered by such agencies on the distribution, quantities, type, etc. of netting or other debris sighted but not collected;

(12) that the Service establish formal agreements with the various marine mammal stranding networks, research institutions, scientists, fishermen, and other possible sources of unpublished data to encourage them to obtain additional information on the types, quantity, and sources of gear and packing material being lost or discarded at sea as well as further information on the species, number, ages, and sexes of animals becoming entangled in discarded net or debris;

(13) that the Service immediately start identifying critical data gaps so as to develop program plans (including a description of the financial, logistic, personnel, and other resources needed) to fill identified data gaps;

(14) that the Service design and initiate such other programs as may be needed to determine: the types, quantity, size, and distribution of net fragments and other entangling debris as well as the likely fate of various types and sizes of netting and other debris present in the areas of concern;

(15) that the Service take such steps as may be appropriate to improve information dissemination and education amongst those actively engaged in fishing; and

(16) that the Service assign a high level administrator/ scientist responsibility for the overall management of all aspects of the net entanglement program and such meetings and workshops as may be held.

The Commission believes that action should be taken on all of the above recommendations as quickly as is possible. While some are clearly essential to the development of a successful workshop, others are necessary to provide badly needed data and information in the short term (i.e., for the workshop) and in the long term if an organized and meaningful approach is to be taken to successfully address the issues.

The Commission will be pleased to provide $4,000.00 towards the immediate convening of the Steering Group as well as to help in such other ways as it can to assist in seeing that the ends are accomplished.

Should you either have questions or wish to discuss this letter, I shall be pleased to do so whenever convenient.

Sincerely,

John Twiss Jr.

John R. Twiss, Jr.
Executive Director

Preliminary
Terms of Reference

ASSESSMENT AND MITIGATION OF FUR SEAL AND OTHER MARINE MAMMAL MORTALITY DUE TO ENTANGLEMENT IN LOST OR DISCARDED FISHING GEAR AND OTHER DEBRIS IN THE NORTH PACIFIC

1. Participation in this international workshop should include scientists, gear technicians, fishermen, net manufacturers, and other persons who might be expected to meaningfully contribute to a scientific and technical workshop of experts.

2. Appropriate activities for workshop participants would be the following:

    i. to identify the species and numbers of marine mammals, birds, turtles, and non-target fish being caught in lost or discarded fishing gear and other debris;

    ii. to assess the effects of this on the demography and/or dynamics of the affected populations and the ecosystem(s) of which they are a part;

    iii. to identify the types and sources of gear and packing material in which marine mammals, birds, turtles, and fish are becoming entangled;

    iv. to determine if certain species or age/sex classes of animals are more likely to be caught in lost or discarded gear and packing material than other species or age/sex classes and, if possible, why;

    v. to estimate the rates of deterioration or longevity of different materials, their rates of accumulation (deposition and clearance), and the likely movements of such material as is lost or discarded with respect to different points of origin;

    vi. to determine the short- and long-term impacts of lost or discarded materials already in the ocean upon marine organisms and identify steps that can or should be taken in this regard;

    vii. to identify and evaluate alternative methods for disposing of unwanted net fragments and packing material as well as incentives (both positive and negative) for preventing or reducing discards; and

    viii. to identify such information as may be needed to better understand and resolve the problem as well as the mechanisms whereby such information can be developed.

QUESTIONS SUBMITTED BY SENATOR WEICKER

OPERATING COSTS

QUESTION: How much of the $648,000 for FY 1985 is for research and related activities, and how much directed toward staff and salaries?

ANSWER: Of the $648,000 requested for FY 1985, $36,600 are for research and related activities. The balance will be spent on salaries of the Commissioners, the Members of the Committee of Scientific Advisors. and the staff; rent; GSA accounting and personnel services; equipment leasing; telephone; printing and reproduction; etc.

RESEARCH

QUESTION: What types of research would the Marine Mammal Commission support if Congress were to restore the $300,000 we appropriated in FY 84?

ANSWER: If Congress were to restore the $300,000, total Commission expenditures in the research and studies area would be generally invested as follows:

A. Facilitate Protection and Recovery of Endangered and Threatened Species.

   1. Development and implementation of a Translocation Plan and other efforts to protect and encourage recovery of the California sea otter population ---- 50.000

   2. Determine utility and, as appropriate, begin development and implementation of recovery plans for east coast populations of right and humpback whales and west coast populations of bowhead, humpback, and gray whales ---------- 50,000

B. Continue Efforts to Define and Resolve Marine Mammal-Fishery Conflicts.

   1. Follow-up on recommendations from the November 1984 Workshop on Fate and Effects of Marine Debris ------- 50,000

   2. Expand efforts to locate and characterize pinniped and cetacean feeding areas off the east and west coasts ------------------------ 25,000

   3. Facilitate efforts to identify and test possible non-lethal methods for preventing or reducing marine mammal-fishery conflicts ------------------------ 25,000

C. Facilitate efforts to make reliable status of stocks determinations and return of marine mammal management authority to states. 50,000

D. Improve methods and procedures for collecting and analyzing data.

   1. Workshop to develop standard methods and terminology for marine mammal behavior ------------ 10,000

2.	Identification of cetaceans' breeding/feeding areas in the Southern Ocean possibly meriting special protection	20,000
3.	Evaluate and, as possible, expedite ongoing efforts to develop technology and programs for assessing seasonal movements, habitat use patterns, and behavior of marine mammals	20,000

QUESTION: The entanglement of marine mammals in lost and discarded commercial fishing gear and other marine debris is a very serious problem which needs immediate attention. In September 1983 the National Marine Fisheries Service hosted a meeting with representatives from 5 countries. It was agreed that an international workshop to examine the entanglement issue should be held. The workshop, as I understand, is being tentatively planned for November of this year. What has the Marine Mammal Commission done thus far to contribute towards the success of the workshop?

ANSWER: Since 1982, the Marine Mammal Commission has been recommending that such an international workshop of scientific and technical experts be held. The Marine Mammal Commission supported its general recommendations for a workshop by thrice offering partial support for the workshop, and it was, in fact, thanks to the Marine Mammal Commission's providing the money, initial terms of reference for the workshop, and recommended participants, that a Steering Group was finally convened in early 1984 to start formal planning. The Chairman of the Commission's Committee of Scientific Advisors serves on the Steering Group. The scope of the workshop and its proposed terms of reference were first presented to the representatives of Korea, Taiwan, Japan, the Soviet Union, and Canada by the Commission's Executive Director in September of 1983. In addition, the Commission has written a contract to have the necessary analyses of domestic and international legal authorities undertaken. With respect to field work, the Commission recently made $4,000 available to the North Pacific Fishery Management Council so that the program to survey beaches for debris, so necessary to an understanding of the magnitude of the problem, could be undertaken. The first surveys have already been flown.

QUESTION: Are there recommendations the Commission has that the National Marine Fisheries Service should consider before convening the workshop?

ANSWER: On 18 November 1983, the Commission made a series of recommendations to the National Marine Fisheries Service. In responding to these recommendations, the Service noted that recommendations 8-14 would not be acted upon until after completion of the workshop. The Commission believes that this is wrong, that it is essential that action be taken on these items as well as the others prior to the convening of the workshop, and that the National Marine Fisheries Service should be encouraged to do so. If work on all these recommendations is started and in some cases completed, the workshop will be many times more valuable than would otherwise be the case. With adequate preparation, it should be possible for workshop participants to make specific recommendations on actions that might be taken both domestically and internationally starting in early 1985. The Commission can find no logical reasons for these recommendations not being followed. On the contrary, logic and common sense suggest the need for their vigorous and immediate pursuit.

QUESTION: As you know, the Interim Convention on Conservation of North Pacific Fur Seals is up for reauthorization in October of this year. There is considerable concern over the declining population numbers of these animals. What is the Commission's position on reauthorization of the Convention? Do you feel it should be extended, modified, or terminated, and why?

ANSWER: The Interim Convention on Conservation of North Pacific Fur Seals should be extended with certain modifications to strengthen international cooperation on research, education, and enforcement programs so as to ensure prompt resolution and action regarding causes of the ongoing fur seal population decline. In the past, the Convention has proved a useful international mechanism for controling fur seal harvesting activities that would otherwise have threatened the stability of the population. It has also helped to ensure completion of needed research, including studies which have led to identification of recent population declines and which have implicated entanglement in lost or discarded nets and other debris as the probable major cause of that decline. The Convention can be a positive force in helping address current threats to the population if it is strengthened so as to: direct additional research towards understanding the causes of the population decline; initiate cooperative international action to control the disposal of nets and other debris at sea; and ensure that harvesting nations can reduce or suspend harvests in the event of possible unforeseen circumstances.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF JAMES C. SANDERS, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

ACCOMPANIED BY:

HARRY CARVER, COMPTROLLER

EDWIN T. HOLLOWAY, ASSISTANT ADMINISTRATOR FOR FINANCE AND INVESTMENT

INTRODUCTION

Senator WEICKER. The final witness of the day is James Sanders, Administrator of the Small Business Administration. The request of the SBA is almost $3.3 billion, the same amount as our Appropriations Act of 1984. We are happy to see that.

Jim, your statement in its entirety will be included in the record, so you may want to go ahead and summarize. I want to use the occasion again today, as I have in the Authorizing Committee, to say how admiring I am of the job that you have done as Administrator.

Mr. SANDERS. Thank you, Mr. Chairman. I appreciate that very much. It is nice to have somebody on our side in this management struggle. You have been a strong ally, and I couldn't ask for a stronger friend. I appreciate it, and I know we will have some problems to deal with within the next few months, too, as, indeed, today.

[Laughter.]

I will forego reading my prepared statement because I know that you are under some time constraint. I will summarize it by saying that we are asking for a total request of $569,100,000 to be broken down into the business loan investment fund of $312 million; to go to the surety bond guarantees revolving fund capital appropriations, $10 million; the lease guarantees revolving fund, $1 million; and salaries and expenses, of $246.1 million.

I don't know if you would like to discuss any part of these in detail or should I proceed to answer some questions you have pertaining to this request.

[The statement of Mr. Sanders follows:]

SBA
U.S. Small Business Administration Washington, DC 20416
Office of the Administrator

PREPARED STATEMENT OF JAMES C. SANDERS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS ONCE AGAIN A PLEASURE TO APPEAR BEFORE YOU TO DISCUSS THE AGENCY'S FY 1985 BUDGET REQUEST. ACCOMPANYING ME IS HARRY S. CARVER, OUR COMPTROLLER, AND EDWIN T. HOLLOWAY, ASSOCIATE ADMINISTRATOR FOR FINANCE AND INVESTMENT. THE REQUEST CONSISTS OF BUDGET AUTHORITY IN THE AMOUNT OF $569,100,000 FOR FOUR ITEMS AS FOLLOWS:

(1) BUSINESS LOAN AND INVESTMENT FUND CAPITAL APPROPRIATION	$312,000,000
(2) SURETY BOND GUARANTEES REVOLVING FUND CAPITAL APPROPRIATION	10,000,000
(3) LEASE GUARANTEES REVOLVING FUND CAPITAL APPROPRIATION	1,000,000
(4) SALARIES AND EXPENSES DIRECT APPROPRIATION	246,100,000

MR. CHAIRMAN, WITH YOUR PERMISSION, BEFORE GETTING TO THE SPECIFIC APPROPRIATION REQUEST ITEMS, I WOULD LIKE TO BRIEFLY HIGHLIGHT OUR FY 1985 PROGRAM. IN ORDER TO PROVIDE SUPPORT FOR THE ECONOMIC UPSWING, WE ARE REQUESTING $3.3 BILLION IN NEW COMMITMENTS FOR GUARANTEED LOANS. THIS IS CONSISTENT WITH THE AMOUNT PROVIDED BY CONGRESS IN LAST YEAR'S APPROPRIATION AND ALMOST $700 MILLION ABOVE FY 1983 ACTUAL. IN ADDITION, OUR REQUEST CONTAINS $41 MILLION

IN DIRECT FINANCING FOR MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES.

HOWEVER, IN AN EFFORT TO CONTROL FEDERAL CREDIT PROGRAMS AND ELIMINATE SUBSIDIZED DIRECT LOANS, WE ARE NOT REQUESTING ANY NEW BUDGET AUTHORITY FOR DIRECT LENDING. DIRECT LOANS INCREASE THE NEED FOR FEDERAL BORROWING AND, BECAUSE THEY CAN BE PROVIDED TO ONLY A SMALL FRACTION OF THE COMMUNITY, THEY TEND TO GIVE UNFAIR ADVANTAGE TO A SMALL GROUP OVER THE MUCH LARGER GROUP OF EQUALLY DESERVING NON-SUBSIDIZED SMALL FIRMS. IT IS FELT THAT THE SMALL BUSINESS COMMUNITY AS A WHOLE WILL BENEFIT MORE FROM STABILIZED FINANCIAL MARKETS, REDUCED INTEREST RATES, AND A LOWERED INFLATION RATE THAN FROM DIRECT FEDERAL CREDIT SUBSIDIES.

WE PLAN TO CONTINUE A VIGOROUS DEBT COLLECTION PROGRAM TO CURTAIL DELINQUENCIES AND LOSSES IN OUR $17 BILLION PORTFOLIO. IN LINE WITH THIS, WE ARE PROPOSING THE CONTINUATION OF SOME 275 TEMPORARY EMPLOYEES SERVICING DISASTER HOME AND FARM-RELATED LOANS, AND THE 150 TEMPORARY EMPLOYEES ASSISTING IN THE INTENSIFIED LIQUIDATION EFFORT. AS A RESULT OF LAST YEAR'S EFFORTS, WE WERE ABLE TO COLLECT IN EXCESS OF $44 MILLION OVER OUR SCHEDULED REPAYMENTS.

THE AGENCY WILL CONTINUE TO EMPHASIZE ITS COMMITMENT TO THE MINORITY SMALL BUSINESS COMMUNITY WITH PARTICULAR EMPHASIS PLACED ON PRESERVATION OR ESTABLISHMENT OF SMALL CONCERNS LOCATED IN URBAN AND RURAL AREAS WITH HIGH PROPORTIONS OF UNEMPLOYED OR LOW INCOME INDIVIDUALS. STEPS WILL BE TAKEN TO ENCOURAGE MINORITY SUBCONTRACTING BY FEDERAL PRIME CONTRACTORS AS WELL AS OUR CONTINUING EFFORTS IN MAKING SMALL BUSINESS ADMINISTRATION GUARANTEED BUSINESS LOANS TO MINORITY-OWNED FIRMS. IN ADDITION, NON-CREDIT ASSISTANCE SUCH AS THE 7(J) PROFESSIONAL CONSULTING PROGRAM WILL REMAIN AT $10 MILLION FOR FY 1985. IN OUR BUSINESS DEVELOPMENT EFFORT BY ESTABLISHING A FIXED PERIOD FOR LONG-TIME

PROGRAM FIRMS TO PARTICIPATE IN THE 8(A) PROGRAM, WE WILL PROVIDE CONTINUED OPPORTUNITY FOR OTHER SMALL DISADVANTAGED BUSINESSES TO ENTER AND PARTICIPATE IN THE PROGRAM AND ALLOW A MORE EQUITABLE DISTRIBUTION OF THE CONTRACT DOLLARS.

COUNSELING AND TRAINING UNDER THE MANAGEMENT ASSISTANCE ACTIVITY WILL RELY INCREASINGLY ON THE PRIVATE SECTOR, WITH SUCH GROUPS AS SCORE/ACE, PROFESSIONAL AND TRADE ASSOCIATIONS, AND THE EDUCATIONAL COMMUNITY PROVIDING AN INCREASINGLY HIGH QUALITY OF IN-DEPTH COUNSELING. THE VARIOUS PROGRAMS UNDER THE PROCUREMENT ASSISTANCE ACTIVITY WILL CONTINUE TO STRIVE TO ASSURE THAT SMALL BUSINESS RECEIVES A FAIR SHARE OF FEDERAL PROCUREMENT DOLLARS.

ON THE MANAGEMENT SIDE, THE OVERSIGHT AND REVIEW FUNCTIONS OF THE INSPECTOR GENERAL'S OFFICE WILL BE MAINTAINED AT CURRENT LEVELS AND THE UPGRADING OF OUR DATA BANK AND EXPLORATION OF AREAS FOR PRIVATE SECTOR INVOLVEMENT WILL CONTINUE.

NO NEW AUTHORITY IS REQUESTED FOR TWO OF THE REVOLVING FUNDS FOR FY 1985. THE DISASTER LOAN FUND, THROUGH REPAYMENTS FROM PRIOR YEAR LOANS, WILL FINANCE A PROGRAM OF $440 MILLION IN PHYSICAL DISASTER LOANS WITHOUT NEW CAPITAL OR BORROWING AUTHORITY. IN FACT, A NEGATIVE OUTLAY FIGURE IS FORECASTED. THE POLLUTION CONTROL EQUIPMENT CONTRACT GUARANTEES FUND HAS SUFFICIENT BALANCES TO SUPPORT A PROGRAM OF $150 MILLION IN NEW POLLUTION CONTROL BONDS IN FY 1985.

NOW, MR. CHAIRMAN, LET ME DISCUSS THE SPECIFIC APPROPRIATION ITEMS.

BUSINESS LOAN AND INVESTMENT FUND

WE ARE REQUESTING A CAPITAL APPROPRIATION OF $312,000,000 FOR FY 1985 FOR THE BUSINESS LOAN AND INVESTMENT FUND. THIS COMPARES WITH $363,400,000 OF ADDITIONAL CAPITAL PROVIDED IN FY

1984. Total obligations for FY 1985 will be $895,000,000 offset by repayments and other financing of $583,000,000 leaving $312,000,000 as the additional capital required to achieve our program levels. Outlays are estimated at $293,000,000 for FY 1985 compared to $489,000,000 in FY 1984.

Surety Bond Guarantees Revolving Fund

We are requesting $10,000,000 in capital for the Surety Bond Guarantees Revolving Fund as compared to $8,910,000 in FY 1984. This will finance a program, when combined with carryover balances of approximately 13,000 contracts, insured in the amount of $1,115,000,000.

Lease Guarantees Revolving Fund

We are requesting a capital appropriation of $1,000,000 in FY 1985 to assure that all claims resulting from defaulted leases are paid. No capital appropriation was required in FY 1984.

Salaries and Expenses

A direct appropriation of $246,100,000 is requested for FY 1985 for salaries and expenses of the Small Business Administration. In addition, $16,600,000 in transfer authority from the Disaster Loan Fund is requested for Disaster Loan Making and Disaster Loan Servicing. The comparable figures for FY 1984 are $225,543,000 in direct appropriation, which includes $1,900,000 supplemental pay raise request, and $16,300,000 for the disaster transfer. Our request reflects no reductions in our authorized permanent positions of 3,934.

Mr. Chairman, this completes my brief review of SBA's budget request for FY 1985. We will be pleased to answer any questions the Committee may have.

DISASTER LEGISLATION

Senator WEICKER. Obviously, the first question that arises is what is the impact going to be on the recently enacted legislation. What is that impact going to be on disaster loans on this budget request? I mean, I know you submitted the budget before that transpired, right?

Mr. SANDERS. Yes; I think that the agricultural disaster loans will probably require some additional manpower. It is a little hard for us to estimate just yet. I think that we can anticipate, unless we experience an unusually large disaster, that we will require approximately 150 to 250 people, is that right, Harry?

Mr. CARVER. Yes, sir.

Mr. SANDERS. Of course, that is the impact of the agricultural provision.

Senator WEICKER. What about reduced interest rates? Isn't there a cost associated with that?

Mr. SANDERS. Yes; we have to retroactively make some adjustments in these affected loans, and that is going to require manpower. It is all so new that we are still considering some of the additional regs. We will have a better idea, a better handle on this, certainly, by the end of the month. But it is going to make an impact on all this.

Needless to say, with the differential in interest rates that is in the reconciliation bill, it is a shame we are not considering it any longer. Nonetheless, we are sure that the Farmers Home Administration is delighted to be out of it and have us in it, and I'm sure that they will get all of the applicants to come over here that have outside credit.

Our real concern is we don't want to be in the agricultural business or marine nonphysical disaster loans at all. It is obvious that somebody in the House felt that there was a real budget problem here, and that is why they put a $100 million cap on it.

However, we are not very sanguine about it. The history of caps being what it is, it is possible that we are beginning to see the emergence of a new entitlement program.

El Nino, I think, is the opening wedge for the impact of atmospheric condition changes of all kinds—above the surface and below the surface. That really concerns me, where that could lead.

WHITE HOUSE CONFERENCE

Senator WEICKER. Congress has sent to the President legislation to reconvene the White House Conference on Small Business. What additional appropriations will be necessary to properly administer the program in fiscal year 1985?

Mr. SANDERS. That bill had, what, five million?

Mr. CARVER. I think the last one was between $5.3 million and $5.8 million for the entire period.

Mr. SANDERS. I think that is, from our point of view, a sufficient amount.

Senator WEICKER. That is in the request?

Mr. CARVER. No, sir, it is not. That was the estimate given.

Senator WEICKER. Do you expect the President to sign that next week?

Mr. SANDERS. I do. I haven't talked to him yet, but I do, Senator.

Senator WEICKER. I heard on the news as I was coming into work that he is resting and reflecting on the last——

[Laughter.]

Senator WEICKER. I thought that was a good term.

Mr. SANDERS. He was supposed to meet the Pope, wasn't he?

Senator WEICKER. I think so. Of course, if I am going to rest and reflect, I'm not so sure I want to do that in Alaska. Notice I say that without Stevens here.

[Laughter.]

ECONOMIC DEVELOPMENT (SECTION 503)

Senator WEICKER. SBA's major economic development and job creation program, Section 503, has a program level of $350 million for fiscal year 1984. The committee staff has been advised that this program ceiling may be reached before the end of the fiscal year, is that correct?

Mr. SANDERS. Well, it is possible. I think that we are watching it closely. We are closely monitoring the funds so we can shift them from the areas of low demand to high demand.

I think that we are pretty much on target with the $350, aren't we?

Mr. HOLLOWAY. Yes, sir, this year.

Mr. SANDERS. I have said in the past that if we needed additional funds, we would send a signal. For 1985, I think it is something that we will have to watch very closely. Incidentally, part of this is that as the program matures, it is to constantly review their efforts to see that the better quality stuff comes up in the kind of loan activity that is job productive from the standpoint of both quantity of jobs available and the long term prospects for those businesses and jobs.

DIRECT LOANS

Senator WEICKER. Your budget request once again calls for the elimination of direct loans. The Senate's authorization bill basically concurs in this request with the exception of handicapped loans and loans to veterans.

The House, however, maintained to modify this program funded at a $295 million for fiscal year 1985. That is a $250 million issue that must be resolved. Do you want to comment on the effectiveness of direct loans that, indeed, do they need a Federal cap for small businesses, especially small minority businesses?

Mr. SANDERS. Yes; we continue to feel that from the standpoint of both the taxpayers' funds and human resources of the agency, the direct lending program is not a productive use of either resource. We feel that the private sector can respond to the needs of small businesses and that kind of energy and that kind of investment would be better off if leveraged through the Guarantee Program. That is what we would like to see expanded. Then we would get a multiple leverage of guarantees rather than a direct outflow of these loans.

So because there is a difference in the loss experience, as we are concerned with the needs of minorities, which might not continue to be met if the direct loan program were wrapped up. We feel that if the House would one day signal that they, too, understood the lack of effectiveness of this program, we would sit down with them and work out a program that I think would respond to the needs of minorities in the guarantee area and which probably would require a higher level of guarantee and that is to say, maybe we could retain the 90 percent and have some fees on top of that. In the other directions, we are trying to get the guarantees down to the 75 percent area.

But we can accommodate the minority needs in the guarantee program if we would really get some encouragement that those on the House side would take a serious interest in reducing these loans.

SMALL BUSINESS DEVELOPMENT CENTERS

Senator WEICKER. The last question.

There will be other questions for submission to the record by Senators Bumpers, Hollings and others. But the last question for the chair now is the administration requests $22 million for the Small Business Development Center Program. The House and Senate are working on legislation to extend this program which will sunset on December 31 of this year.

My question is, is the program working, and also the question that concerned the fact that 32 States with 6 States having applications pending, is your budget request adequate?

Mr. SANDERS. I think that the budget request will meet that list of the numbers that were pending.

Do you have that?

Mr. CARVER. Here it is.

Mr. SANDERS. I think that this program, SBDC's, is one that has a long way to go. I think it got off to a fast start in the business school kind of leverage in which they take Federal funds and then they put some professors involved in the program to offset their contributions by their salaries and they pay them at some other built-in costs that are there at universities. I would like to see the program move out in the area, not to move away totally from business school counselling and training, but I would like to see it involved in more technological work with small businesses, I would like to see the engineering schools involved.

I would like to see SBDC take on some of the outreach programs with minorities and women and international trade and some of these things. Some of those SBDC's that are doing very well and are effective and have a good consortia and do reach out.

Others are badly managed, and the ones that have failed have been badly managed. There are some complaints by some of them that they don't get the attention that they need from the local district office. Well, the way to correct that, of course, is to bring that to my attention and for us to respond to it on a management basis. There is a bill over in the House that approaches this thing by trying, again, to manage something through legislation, and that doesn't work.

It only makes it more rigid and clumsy. I think we responded to the needs that have been brought up to us by SBDC's by already changing the reporting responsibility at the Deputy Associate Administrator to the Management Assistance to report to me for the indefinite future so that we can resolve some of these programs. We put more emphasis in the last year or so on decentralization, which is more effective. That has been the whole method of management, including the SBDC's.

We want those people who are in the local area to be involved with the local SBDC. Where it doesn't work, you get personality conflicts. Then the Administrator has to get into the action, and that is the way it should work.

So in summary, the long way of answering your question is, I think that we have enough funds for the next year. I think the funds we have requested for 1985 are adequate. I do think that the program needs some tightening up here and there and more accountability, more support from the local areas, States, and the universities, and not exclusively universities; other institutions should also be considered.

I think we can solve those things in time.

Senator WEICKER. Thank you very much.

SUBMITTED QUESTIONS

I have no further questions except those to be submitted for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

Question: The proposed guaranteed loan level for the Business Loan and Investment fund is $3,280,000,000, the same as mandated in Public Law 98-166. However, the levels for general business loans and investment company loans are different than those approved for FY 1984. Why is that?

Answer: The FY 1985 program levels represent the original planning estimates developed in conjunction with OMB. The level for Small Business Investment Company loans is $30 million higher than our program level of activity in FY 1983, and was estimated to be sufficient at the time of its development. If in FY 1985, it is determined that this amount will not be sufficient to meet anticipated demand, we will request that additional program funding be provided.

Question: Does SBA expect to obligate during the current fiscal year the total program level for direct loans as approved in Public Law 98-166? Provide a projection by individual program.

Answer: We anticipate that we will obligate the majority of the direct funds provided. A specific breakdown by program is as follows:

Direct Loans
($ in millions)

	Actual thru 4/30/84	Projected FY 1984	Appropriated FY 1984
General Business	$43.8	$108.3	$108.3
Economic Opportunity	7.8	15.0	45.0
Handicapped	15.8	20.0	20.0
Veterans	13.2	25.0	25.0
Energy	.3	1.0	3.0
MESBIC	22.8	41.0	41.0
Total	103.2	210.3	242.3

Direct loan funds did not become available to the SBA until the latter part of the first quarter. However, straight-line projections indicate that there might be deficiencies in several program areas. Efforts are being made to direct loan applicants into those program areas that appear to have sufficient funding, assuming of course that they meet the eligibility requirements of that program. Therefore, actual approvals in those areas could be more than indicated on the above chart.

Question: What are the total amounts of loan guarantee repurchases projected for fiscal years 1984 and 1985?

Answer: Guarantee repurchases are estimated at approximately $508 million for FY 1984. The amount contained in the budget for FY 1985 is $495 million.

Question: SBA projects an uncommitted, unobligated balance of over $1.2 billion in the disaster loan fund. What is the new projection, given the passage of P.L. 98-270? If the statutory caps in P.L. 98-270 are lifted prior to the ceilings being reached, what is SBA's estimate of the unobligated balance for FY 1985?

Answer: Exact estimates of the impact of the new legislation have yet to be developed. We are in the process of developing regulations to control the costs of the legislation, but the unpredictability of the program precludes absolute control of activity. We will make every effort to remain within the new program limitations of $500 million for physical loans and $100 million for non-physical loans which would add only an additional $160 million of obligations to the fund, over and above the budgeted amount. However, depending on the ultimate impact of the legislation, the balance could be easily depleted.

Question: What is SBA's estimate of the additional personnel needed in FY 1985 to meet its obligations under P.L. 98-270? Will SBA request a budget amendment for these positions?

Answer: It is estimated that no additional permanent positions would be required to fulfill the obligations under P.L. 98-270. However, additional temporary personnel will be hired on an "as-needed" basis and separated when the need has been satisfied. This flexibility allows us to meet the needs of the disaster program without requiring additional permanent personnel.

We anticipate that the new legislation might require as much as 150-250 additional temporary personnel. Because we are restricted by our current availability, any additional hires as a result of this law will require additional funding.

Question: What funds will be necessary to reconvene the White House Conference on Small Business? Will SBA request a budget amendment in this area, assuming the authorization bill is signed into law?

Answer: It is estimated that additional funding of $5.3 to $5.8 million would be needed to reconvene the White House Conference on Small Business. This amount would need to be provided as an additional appropriation, because our current availability would not be sufficient to cover these added costs.

Question: What is the projected carryover of the $22 million provided in the current fiscal year for Small Business Development Centers?

Answer: Since the Salaries and Expense fund is an annual appropriation, there are no carry-over of funds into another fiscal year. However, it is estimated that we will utilize the entire $22 million provided for Small Business Development Centers.

Question: SBA is again requesting a transfer of $16.6 million from the disaster loan fund to the salaries and expenses account to fund disaster loan making and servicing. Does this figure fully cover the costs associated with this activity? If not, what is a more accurate figure?

Answer: The request of $16.6 million is a planning number that has remained relatively static for a number of years. Because of increased costs in all areas, a more realistic estimate of the amount needed to fund the disaster loan making and servicing functions would be $18.6 million.

Question: SBA is requesting an increase in the Agency's representation fund of $1,000. Why is this increase necessary? How were the funds used in FY 1983 and FY 1984?

Answer: In FY 1983, we had expenditures of $1,172. These expenditures, and those in FY 1984, represent for the most part refreshments provided to distinguished guests of the Administrator of the Small Business

Administration. We feel that this requested increase would provide the Administrator increased flexibility to provide refreshments for most of his distinguished guests. Under the current availability, he is only able to pick and choose when refreshments would be appropriate. The current amount has not been increased since originally established in the FY 1975 S&E appropriation.

Many other federal agencies have representation funds that are substantially greater than that of the SBA. To name a few; the Office of Personnel Management - $2,500, the Environmental Protection Agency - $3,000, the Civil Aeronautics Board - $5,000 and the Federal Communications Commission - $3,000.

Question: The "Special Programs" activity is being cut in half. What programs will be affected by this reduction?

Answer: The reduction of $3,149,000 is arrived at by activity as follows:

International Trade	$+ 55,000
Women's Business Ownership	-1,700,000
Private Sector Initiatives	-16,000
Veteran's Affairs	-1,491,000
National Advisory Council	+ 3,000
	$-3,149,000

The proposed changes by item are as follows, and also identified on page S&E 89.

Reduction in temporary support personnel	$-146,000
Annualization of existing positions	-15,000
With-in grade step increases	+14,000
One additional compensable day in FY 1985	+6,000
Benefits related to above	-8,000
Disabled and Vietnam Veteran outreach	-1,500,000
Women Business Ownership National Initiatives Conferences	-1,500,000
	-3,149,000

The $1.5 million reprogrammed for the National Initiatives Conferences is a series of conferences with local co-sponsors offering high quality and practical training for current and potential women business owners. It was originally anticipated that all of the conferences will take place prior to the start of FY 1985. Therefore, no funding requirements were needed. It now appears that 4 conferences will occur during FY 1985.

The $1.5 million available in FY 1984 for Disabled and Vietnam Veteran outreach will be mostly utilized for contracts and studies. These studies will be assessed during FY 1985 along with continued efforts of private sector involvement. Therefore, it was determined that additional funding requirements for FY 1985 could not be properly determined until the current studies have been evaluated.

The Small Business Administration through private sector involvement and within current resource availability will continue to emphasize its efforts to target assistance towards women-owned businesses, veterans, the handicapped and those small business firms involved in exporting operations.

Question: Has SBA discussed with MBDA the possibility of combining or co-locating Small Business Development Centers with Minoritry Business Development Centers? If not, why not?

Answer: SBA has not discussed with MBDA the possibility of combining or co-locating the Small Business Development Centers with the Minority Business Development Centers because past history reflects that estimated management and technical assistance delivery resources have not been as sensitive and responsive to the specialized needs of disadvantaged persons.

Question: SBA projects that full-time equivalent employment will be reduced by 100 work-years in FY 1985. Where will this reducction occur?

Answer: It is anticipated that the reduction of 99 FTE will occur within the temporary employment. The FY 1985 Congressional Budget Submission reflects the reductions within the following activities:

	FTE
Management Assistance	14
Finance and Investment	36
Minority Small Business COD	12
General Counsel	10
Resource Management	12
Special Programs	9
Inspector General	5
Other (Misc.)	1
Total	99

Question: The Natural Resources Sales Assistance Program includes set-asides for small businesses on the sale of Federal timber. How successful has this program been in promoting and maintaining small businesses in the timber industry? Does SBA support proposals that would restrict the ability of small businesses to compete for Federal timber sales?

Answer: The recently published joint United States Forest Service/Small Business Administration National Study Report - Set-Aside Program found that : " The set-aside program meets the policy intent of the Small Business Act," and " The set-aside program is necessary to ensure that a fair proportion of sales of Government owned timber are made to small business."

The SBA is strongly opposed to any proposals that would restrict the ability of small business to compete for sales of Government owned timber.

Question: SBA proposes a program level of $20 million for Business Development Expense (BDE) in FY 1985. Does SBA expect to fully obligate the $17 million provided in FY 1984?

Answer: Yes, we expect to fully obligate the $17 million for BDE provided in FY 1984.

Question: What are the increased SLUC fees to be assessed by GSA in FY 1985? If a cap of 107% is imposed in 1985, what savings would accrue?

Answer: The basic SLUC estimates as provided by GSA are $16,507,866 for FY 1984 and $17,825,584 for FY 1985, or an increase of 8%. However, the current amount appropriated for FY 1984 is $15,272,000 and the request for FY 1985 is $15,601,000.

QUESTIONS SUBMITTED BY SENATOR WEICKER

Question: Under the Trade Reorganization Act the Minority Business Development Agency, currently in Commerce, would be moved to the Small Business Administration. Are you in favor of this move? How, in your judgment, would the small business community be better served by this new arrangement?

Answer: The Small Business Administration is in favor of the Minority Business Development Agency, currently in Commerce, being moved to SBA. A move of such a nature would reduce the administrative cost of delivery of management and technical assistance to disadvantaged business persons, and thereby increase the benefits received by the clients.

Question: The FY 1985 request for funding of salaries and expenses for special programs is almost one-half the 1984 level. In what specific programs are the reductions occuring? Why are these actions being taken?

Answer: The reduction of $3,149,000 is arrived at by activity as follows:

International Trade	$ +55,000
Women's Business Ownership	-1,700,000
Private Sector Initiatives	-16,000
Veteran's Affairs	-1,491,000
National Advisory Council	+3,000
	$-3,149,000

The proposed changes by item are as follows, and also identified on page S&E 89.

*	Reduction in temporary support personnel	$-146,000
*	Annualization of existing positions	-15,000
*	With-in grade step increases	+14,000
*	One additional compensable day in FY 1985	+6,000
*	Benefits related to above	-8,000
*	Disabled and Vietnam Veteran outreach	-1,500,000
*	Women Business Ownership National Initiatives Conferences	-1,500,000
		-3,149,000

The $1.5 million reprogrammed for the National Initiatives Conferences is a series of conferences with local co-sponsors offering high quality and practical training for current and potential women business owners. It was originally anticipated that all of the conferences will take place prior to the start of FY 1985. Therefore, no funding requirements were needed. It now appears that 4 conferences will occur during FY 1985.

The $1.5 million available in FY 1984 for Disabled and Vietnam Veteran outreach will be mostly utilized for contracts and studies. These studies will be assessed during FY 1985 along with continued efforts of private sector involvement. Therefore, it was determined that additional funding requirements for FY 1985 could not be properly determined until the current studies have been evaluated.

The Small Business Administration through private sector involvement and within current resource availability will continue to emphasize its efforts to target assistance towards women-owned businesses, veterans, the handicapped and those small business firms involved in exporting operations.

Question: There is a reduction of over 33 percent in the 1985 funding request for Innovation, Research and Technology. What is the reason for this reduction?

Answer: The reduction of $488,000, found on page S&E 51, will result in the elimination of contractual technology assistance services now provided to small firms interested in submitting Small Business Innovation Research proposals to the eleven participating agencies. The technology assistance is currently being provided through cooperative agreements with the University of Connecticut and the University of Southern California and consists of computerized literature searches of data relevant to specific research topics for which SBIR proposals are being solicited. The object of this literature search is to provide the SBIR proposed with information on the "state-of-the-art" in the research area he or she is contemplating submitting an SBIR proposal on.

It is now reasonably apparent that computerized literature searches of the type currently being provided by SBA are readily available from other sources, both public and private. As the technology of computerized data retrieval has progressed and the ease of accessing such data has increased, a great many university and college libraries or engineering departments can now provide literature searches of the type needed to support SBIR. Also, both NASA and the Department of Defense have extensive systems in place for doing searches and are willing to make them available to small businesses. Private concerns are now engaged in providing these services on a fee basis as well. It does not appear that SBA needs to be in this type of technology assistance activity to assure an adequate literature search capability for interested SBIR proposals.

Question: Why does the agency want a $100,000 increase in "representation" money? How was this money used last year?

Answer: The amount requested in the budget is $2,500 or an increase of $1,000 above our current authority.

In FY 1983, we had expenditures of $1,172. These expenditures represent for the most part refreshments provided to the distinguished guests of the Administrator of the Small Business Administration. We feel that this requested increase would provide the Administrator increased flexibility to provide refreshments for most of his distinguished guests. Under the current availability, he is only able to pick and choose when refreshments would be appropriate. The current amount has not been increased since originally established in the FY 1975 S&E appropriation.

Many other federal agencies have representation funds that are substantially greater than that of the SBA. To name a few the Office of Personnel Management - $2,500, the Environmental Protection Agency - $3,000, the Civil Aeronautics Board - $5,000 and the Federal Communications Commission - $3,000.

Question: With the importance of management assistance to the success of small businesses, do you believe that a reduction of $337,000 in the Management Assistance program is warranted? Why is this reduction being requested?

Answer: The reduction requested is outlined on page S&E 37 and reflects the elimination of 24.4 FTE positions, which should have little, if any, impact on the Agency's delivery of management assistance.

Question: What actions has SBA taken in response to the recommendations of the Inspector General's Advisory Council on Debt Collection, specifically in the areas of using private debt collection services and requiring banks to liquidate loans when necessary?

What efforts are being made to use private agencies for debt collection?

Answer: During the past two years, SBA has increasingly emphasized and utilized participating lenders in the liquidation process. The Agency views this approach as a form of contracting-out without the usually attendant costs. As a result of these efforts, participating lenders are now handling approximately 27% of the guaranteed loans in liquidation status. The Agency as a whole is moving broadly and gradually in this direction and "in-roads" are being made in the few regions which have not effectively utilized this option in the past. In addition, the Agency's "preferred lender" pilot is continuing to test the performance of several major participants by requiring special involvements in this area.

Use of private agencies in the area of Debt Collection is also on the upswing. Credit confirmation projects are being piloted in California and Georgia under contract with the Equifax Corporation (consumer loans) and Dun and Bradstreet (commercial loans). Both projects are designed to test the collectability of a sample portfolio of charged-off loans by determining whether reachable assets exist, and by personal confrontation with the obligor. Both pilot efforts will be completed within the fiscal year and, if successful, will be significantly expanded. The Agency also has under legal review, a proposal for utilizing a collection firm now under contract with the Department of Treasury for the collection of consumer accounts. If a legal basis exists, it is anticipated that a major effort will be mounted in the near future in this area.

Question: Are the projected increases in debt collection for FY 1984 and FY 1985 realistic given that last year's projections fell short and the portfolio has not significantly increased?

Answer: In FY 1983, the SBA had total repayments in BLIF and DLF of $862.5 million, for a realization of $44.5 million of the imposed $120 million debt collection target. With a decreased portfolio in FY 1984, repayments through February are slightly stronger than for the same period last year. If this current trend continues for the duration of 1984, we would anticipate repayments of approximately $875 million, for a realization of $96 million of the imposed $175 million debt collection target. If collections can remain strong through FY 1985, they will result in only a $20-30 million shortfall from the amount contained in the budget.

Question: On page BLIF-8 of the Budget Estimate book we noted that request for Investment Company Loans was reduced by $60 million, while the General Business Loans Fund was increased by the same amount. Why were these changes made?

Answer: The $190 million request for Small Business Investment Company Loans in FY 1985 is $30 million more than our program level of activity in FY 1983, and was estimated to be sufficient at the time of its development. If in

FY 1985, it is determined that this amount will not be sufficient to meet anticipated demand, we will request that additional program funding be provided.

Question: What actions is the agency taking with respect to the PASS system? What is the agency's position on the provisions of the House bill which would prohibit SBA from expending any additional funds on the system for FY 1985 without prior Congressional approval?

Answer: We have identified two main problem areas regarding the PASS system and taken appropriate action on each.

Problems can be summarized as follows:

A. A pressing need to increase the efficiency and usefulness of the existing system by modifying PASS software to correct processing deficiencies.

B. The large backlog of information awaiting entry and (2) the need to regularly operate the annual update, outreach, and 8(a) functions of the system."

SBA Action

The three major alternatives identified by us are as follows:

(1) Continue with the existing system without any changes.

(2) Redesign the existing hardware and software system (functionally and technically).

(3) Technically upgrade the software system without changing the existing requirements.

Option 1 was eliminated because the existing system is documented as having software deficiencies, costly to operate and extremely difficult to modify. Because of these problems and the need to keep the system operating as effectively as possible, we realize that either option 2 or 3 must be implemented.

Option 2 is the ideal approach, however, it would require a greater commitment of time and money to implement. For if we were to undertake a functional redesign of the overall system, it would be imperative for us to work with the user community to ascertain what the requirements would be for the new system. Only option 3, a technological software upgrade, would allow us to provide immediate relief from the existing problems. We feel that with this upgrade to a data base management system, the basis software is in place to support whatever requirements are identified.

The flexibility of the data base software coupled with the fact it is a commercial package rather than specifically tailored software for PASS means that it can be continually improved. It also means that the PASS system can remain more technologically current and that improvements to the system will occur without any significant effort on the part of SBA as the vendor improves his software product to remain competitive. The redesign of any computer system takes into account two severable tradeoff elements for consideration. The elements are the software and the hardware systems. Each element makes a major impact to the total system and thus must be considered as to cost, efficiency, timeliness and future needs. The ultimate system encompasses a balanced software and hardware system. The project currently underway in SBA is a technological upgrade of the software system to a state-of-the-art data base management system. The operating problems and the inability to allow for minor changes, particularly in the area of data elements, have been previously identified and documented. The implementation of this new software will stabilize the operation of the system, provide flexibility for adding new data elements and provide a sound basis for the analysis and redesign of a new system when that project is undertaken. Since this upgrade is technical in nature and not a redesign of the functional requirements, our evaluation was a strict, technical evaluation of the various software available. The evaluation involved over 20 different products. The data base system selected will provide for the continued operation of the system with significant operational improvements, a few enhancements, but only as a result of the new technology and minimal disruption to the users. The software also provides a good basis and is flexible enough to handle new requirements when they occur. The selection of the package chosen as being the correct choice for PASS was substantiated by another Government agency in an independent review initiated by us.

The U. S. Railway Association (USRA) was selected by the SBA to operate and maintain the system during this fiscal year. Per SBA management and technical direction, the USRA will be modifying the PASS software on an as required basis.

The backlog accumulated in FY 1983 has been eliminated. More than 18,000 small firms have been added to the data base by USRA. The annual update and outreach efforts are in process. The current 8(a) tape has been furnished to USRA for processing.

In addition to identifying the above problems and taking the appropriate actions, we are closely monitoring the technical and management aspects of PASS as performed by USRA. Weekly or biweekly status meetings are held permitting a free flow of information between SBA and USRA. This encourages a full interchange of ideas. Meeting notes are prepared and distributed. A cap of $900,000 was placed on USRA's costs for FY 1984. Current billings and projections cause us to continue our conviction that this level of funding will be adequate. USRA has incorporated some operating efficiencies to reduce costs, e.g., the process to add profiles to the data base has been improved.

Also, after data entry, all work is verified for accuracy to insure that errors are minimized. In addition, only data entry personnel that are highly accurate are selected for PASS work. The annual update process is used to revalidate the data. This cycle should be completed by the end of September. Several thousand update changes have been processed already as a part of the process to insure that data is accurate and complete.

Finally, the SBA has in place an allotment process which precisely allocates monies to program areas according to appropriation acts. The agency would not spend monies in excess of current availability nor incur excess obligations contrary to Public Law.

WHITE HOUSE CONFERENCE

Question: The Congress has sent to the President Legislation to reconvene the White House Conference on Small Business.

What additional appropriations will be necessary to properly administer this program in FY 1985?

Answer: It is estimated that to reconvene the White House Conference on Small Business would require an appropriation of approximately $5.3 to $5.8 million.

503 PROGRAM

Question: SBA's major Economic Development and Job Creation Program, Section 503, has a program level of $350 million for FY 1984. Committee staff has been advised that this program ceiling may be reached before the end of this fiscal year. Is that correct?

Answer: Funding at the $350 million level will allow the Agency to provide assistance to the development companies and communities in their efforts to achieve economic development through long-term fixed assets financing for small business concerns. At this level, about 2,000 small business concerns will be assisted. This will induce about $490 million of private sector investment and will result in about 23,000 jobs being created. Of the $350 million, $315 million is expected to be in the 503 program and $35 million in the 502 program. Based on approvals through March ($161 million), the $350 million for FY 1984 should be sufficient.

Question: In FY 1985, the Administration, once again, requested $350 million for this program.

In light of this year's experience, do you believe this request is adequate?

Answer: We feel that the demand for 503 assistance will increase slightly in FY 1985. However, the $350 million requested, while lean, should be adequate to cover the demand.

DISASTER LOAN INTEREST RATES

Question: The President recently signed into law a bill dramatically reducing SBA disaster loan interest rates. To avoid having farmers flocking back to SBA, interest rates at SBA and farmers home administration must be "substantially similar". Does FmHA plan to reduce its rates so as to avoid SBA becoming deeply involved in farm disaster lending?

Answer: We have had conversations with FmHA officials regarding SBA's involvement in "farm lending". However, we cannot speak for the FmHA regarding their response to the recently passed legislation. We will make every effort to stay within our availability and reduce costs by the implementation of specific regulations, however, the unpredictability of the program precludes absolute control of activity.

Question: If FmHA does not reduce its interest rates, what will be the impact on SBA farm disaster lending?

Answer: We cannot supply any definite estimates, but we believe there will be a substantial impact on SBA farm disaster lending. Farmers, as any other business person, will seek to borrow needed funds from the cheapest source, all other things being equal. Perhaps the magnitude of this Congressional action can be put in perspective by past history. During fiscal years 1977 through 1981, when farmers were able to get disaster funding from

FmHA or SBA, SBA made over 84,000 farm loans for more than $4 billion. However, since that time the economic position of the agricultural industry has changed, as have our regulations and procedures, which makes definite estimates unreliable.

DISASTER LOAN CEILING

Question: This law (P.L. 98-270) also creates for the first time a statutory ceiling of $500 million for SBA's Physical Disaster Program in FY 1984. What has been SBA's disaster experience for the first half of this fiscal year? (Note: $91 million) with the farmers back in the program do you expect to reach this program ceiling prior to September 30, 1984?

Answer: For the first six months of FY 1984 we have made 4,478 disaster loans for $91.4 million. As explained in the answer above, we will make every effort to stay within the program ceiling, but the unpredictability of the program precludes absolute control of activity.

ADEQUACY OF DISASTER LOAN PERSONNEL

Question: Do you have adequate personnel to administer the new disaster law? Have you asked, or do you intend to ask, OMB for additional personnel? If so, how many?

Answer: We have adequate permanent staff to administer the new disaster law. However, additional temporary personnel will be hired on an "as needed" basis and separated when the need has been satisfied. This flexibility enables us to meet the needs of the disaster program without requiring additional permanent personnel.

We anticipate that the new legislation might require as much as 150 - 250 additional personnel. Because we are restricted by our current availability, any additional hires as a result of this law will require additional funding.

EL NINO

Question: In mid-May, the authorizing committees will have a conference on the SBA Authorization Bill for FY 1985. One of the house-passed provisions would make fisherman off of the West Coast eligible for disaster loans due to "El Nino", a condition which has changed the spawning habits of salmon and other fish. What is your position on this provision? What is the potential cost of this amendment?

Answer: We oppose this provision. This type of "economic dislocation" was previously covered by Section 7(b)(9) of the Small Business Act, which was repealed in August 1981 by P.L. 97-35. Under that section, states would have been eligible for a disaster declaration because of "economic dislocation." During the four years that this section was in existence, 25 declarations were issued and at least 2,231 loans for more than $67 million were made. The section became a catchall for subsidized loans in many instances where adverse conditions were not within the control of the business person, even though they constituted part of the risk of being in business.

Our experience has been that such loans have a very high delinquency and default rate. For example, economic dislocation disasters were declared in California and Oregon in the fall of 1980 because of the temporary closure of the salmon fishing season, to ensure continued salmon breeding and preserve fishing rights of Klamath River Indians. Fifty-one percent of the loans made in California are either charged off, in liquidation or delinquent; nearly 50 percent of the Oregon loans fall into these categories.

Given the virtually unlimited combinations of atmospheric conditions that can result in weather that is not conductive to the operations of a certain type of business, we feel that it is essential that declarations be limited to those disasters caused by a physical occurrence as defined in our regulations. To negate those regulations by legislation sets a very undesirable precedent for reopening the disaster assistance program whenever atmospheric conditions produce a drought, a lack of snow, or, as in this case, a change in the temperature of the ocean, with a resulting drain on the Federal budget.

DIRECT LOAN ELIMINATION

Your budget request once again calls for the elimination of direct loans. The Senate's Authorization Bill, basically concurs in this request, with the exception of handicapped loans and loans to veterans.

The House, however, maintained and modified this program and funded it at a $295 million level for FY 1985. This is a $250 million issue that must be resolved.

Question: Jim, how effective have direct loans been? Do they fill a credit gap for small businesses, especially minority businesses?

If the House Provision passed, is the program workable?

Answer: We do not feel that direct loans have been very effective, but more important, we feel that the relative cost in resources is their biggest drawback. With the same resources in terms of both personnel and loan dollars, we could provide considerably more assistance, and better assistance, through the guaranty program.

We do not feel that direct loans fill a credit gap when the programs are carried out in a responsible manner. There was a period when loans were made to businesses that could not obtain credit elsewhere. However, the bulk of these loans would not now be made utilizing prudent credit criteria. Many of these loans now are in serious deliquent or loss status.

It should be clear from this experience that credit gaps should not be filled by relaxing credit criteria, then making loans which must be foreclosed upon.

You ask if the program is workable if the House provision is passed. I believe the answer to this question must depend on the definition of workable. I believe it would be workable, but at what cost? I believe with present credit standards, a lesser program is also workable. As long as prudent credit standards are employed, a smaller program will be adequate used in conjunction with sufficient guarantee authority.

SMALL BUSINESS DEVELOPMENT CENTERS

The Administration requested $22 million for the Small Business Development Center Program. The House and Senate are working on legislation to extend this program, which will sunset on December 31, 1984.

Question: Jim, is this program working?

Answer:

Question: The SBDC program is now in 31 states. Six states have applications pending. Given this demand, is your budget request adequate?

Answer: The $22 million funding level should be adequate, particularly with the tighter requirements for matching dollars required in the pending legislation.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

SMALL BUSINESS ADMINISTRATION
SBA/HUD ECONOMIC DEVELOPMENT PROGRAM

On April 19th a special economic development and technical assistance program was announced that will be jointly operated by SBA and the Department of Housing and Urban Development.

Question: The Reagan Administration has steadfastly opposed continuing the economic development programs of the Economic Development Administration. What is different about the new SBA/HUD program that makes Federal participation in economic development okay?

Answer: This question assumes the creation of a newly funded economic development program. In fact this program is a technical assistance contract, which HUD/SBA competitively awarded to the MATCH Institution.

The purpose of the contract is to provide technical assistance only, not actual funds, to 50 Development Block Grant communities. These Communities are seeking ways to improve their use of their previously appropriated CDBG entitlement funds, in combination with local private and public resources, for local economic and/or small business development projects.

Those communities nominated and selected to receive technical assistance are experiencing some difficulty in the design or implementation of a specific CDBG eligible activity. The technical assistance being rendered is being structured to help the communities in overcoming these difficulties.

Question: How much has SBA allotted and what is the source of funding for SBA's participation in this program?

Answer: SBA has allocated $71,975 for this program out of its current availability, while HUD allocated $400,000.

Question: Columbia, South Carolina was one of the 24 communities named to participate in this program. What kind of projects do you envision for Columbia?

Answer: The City of Columbia, South Carolina has requested technical assistance for two neighborhood retail centers, which have minority developers. The developers are financially capable, but needed technical assistance in leasing methods and in putting the project together. The neighborhoods are 60% minority and low income with no prior development occurring in the past 10 years.

SBA MANAGEMENT ASSISTANCE IN RURAL AREAS

Mr. Sanders, earlier this year I corresponded with you with regard to the proposal of the National Association of Development Organizations to supply management assistance in rural areas. I was glad to hear that the pilot program had been approved.

Question: How much has been allocated and what is the current status of this program?

Answer: Funding for this project is estimated at approximately $180,000. The proposal is currently in SBA's Office of External Awards and under negotiation.

SBA IMAGE AND WORKING RELATIONSHIP WITH CONGRESS

On page S&E-8 it is stated that "greater enhancement of SBA's image and its working relationships with the Congress will be emphasized." This particular Senator has no problems with either SBA's image or its relationship with Congress. SBA has been most responsive, particularly with regard to our recent disaster.

Question: I thought everybody had a high regard for SBA; why do you feel a need to bolster SBA's image?

Answer: It seems that the only publicity that the SBA receives from the media and other sources is bad publicity. Publication of loss rates and businesses gone bad seem to be the only news-worthy items about SBA's operations. It is for these reasons, that the general public is given a negative image of the SBA, its programs, and the federal government in general. We hope to improve this negative portrayal by publishing success stories and other positive information about the SBA and its operations. We feel that this can only improve our working relationships with the public, financial institutions, the Congress and other federal departments and agencies.

Question: Is the $1,000 increase in your representation (entertainment) fund part of your image enhancement effort?

Answer: We are requesting this increase to provide the Administrator increased flexibility in offering refreshments for most of his distinguished guests. Many other federal agencies have representation funds that are substantially greater than that of SBA. To name a few; the Office of Personnel Management - $2,500, the Environmental Protection Agency - $3,000, the Civil Aeronautics Board - $5,000, and the Federal Communications Commission - $3,000. Under our current availability, the Administrator must pick and choose when refreshments would be appropriate. Also, the current availability hasn't been increased since originally established in the FY 1975 S&E appropriation.

DISASTER LOAN FUND

Question: In view of the recent disasters, such as the tornado in South Carolina, how good is the projected uncommitted balance of $1,025,588,000 for fiscal year 1984 in the Disaster Loan Fund?

Answer: The South Carolina tornado declaration has only produced approvals of about $100,000 as of April 27, 1984. Total applications accepted through this same period total only $1,300,000.

The area of great concern to us now would be the impact on the funding of the recent legislation regarding SBA's involvement in farm loans. Exact figures are not available at this time, but the impact of this legislation on the fund balance could be severe. We will make every effort to stay within the $500 million program authorized, however, the unpredictability of the program does not allow for absolute control of activity.

Question: What is the total number and dollar amount of applications received in South Carolina due to the disaster and how many have been approved and in what amount?

Answer: As stated above, we have received 86 applications for approximately $1,300,000 through April 27, 1984. Of these, 9 for about $100,000 have resulted in approvals.

DEBT COLLECTION PROGRAM

Question: By fund, please list for the record the portfolio and debt as of September 30, 1983, and estimated for fiscal 1984 and 1985.

Answer:

SBA's Share of Loan Porfolio
($ in millions)

	FY 1983 Actual		FY 1984 Estimate		FY 1985 Estimate	
	#	$	#	$	#	$
Business Loans	137,344	$11,649	145,000	$12,300	153,000	$13,000
Disaster Loans	294,278	5,504	270,000	5,060	253,000	4,750
Total	431,622	$17,153	415,000	$17,360	406,000	$17,750

Question: How much did SBA estimate last year would be collected in 1983 by the "vigorous" campaign to collect money owed SBA and how much in debts was actually collected in 1983?

Answer: In FY 1983, a debt collection target of $120 million was imposed on the SBA. This brought the estimated amount for repayments to $938 million, for BLIF and DLF. Actual 1983 repayments were $862.5 million, or a realization of $44.5 million of the $120 million target.

Question: How does that compare to the amount collected in 1983?

Answer: See answer above.

Question: How much in debts did SBA estimate last year would be collected in 1984, and what is the present estimate for 1984.

Answer: The FY 1984 estimate of total repayments, including a debt collection target of $175 million, contained in the FY 1984 budget submission was $964 million. The comparable amount contained in the FY 1985 budget submission is $954 million.

We feel that this figure for FY 1984 is overly-optimistic relative to 1983's accomplishment of this target, and based on actual collections to date. A more realistic estimate at this point would be for total repayments to approximate $875 million, or a realization of $96 million of the debt collection target, assuming the strong collection trend in the first half of FY 1984 continues.

Question: How much is estimated to be collected in 1985?

Answer: The FY 1985 estimate for total repayments, including a debt collection target of $175 million, contained in the FY 1985 budget submission is $945 million If the strong collection trend experienced in the first half of FY 1984 continues, it is possible that total repayments for FY 1985 will only result in a $20 to $30 million shortfall.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

LEVEL OF GUARANTEED LOANS FOR SBA

Question: The President's budget for Fiscal Year 1985 provides for a total guaranteed loan level of $3.28 billion, the same level as appropriated for Fiscal Year 1984. However, the budget document (page 5-67) also states that the President proposes to phase down SBA loan guarantee assistance to a level of $900 million by Fiscal Year 1987.

If Congress were to accept the President's proposed drastic reduction in the availability of guaranteed loans, what impact would that level have on the agency's ability to meet the demands from small businesses for credit assistance, on your efforts to market the agency's programs with the banks and the private sector, and on our Congressional initiatives to establish a secondary market in SBA-guaranteed loans?

Answer: While we are unable to predict with any reasonable degree of accuracy what kind of demand to expect in FY 1987, we believe there is no escaping the fact that such funding would be totally inadequate at today's level of demand, or anything close to it.

This proposed level would severely restrict any flexibility that we now have in piloting new programs utilizing private lenders. In combination with the elimination of direct lending, the SBA would no longer be responsive to the credit demands of the small businessman and would be an ineffective source of funding for the small business community.

IMPLEMENTATION OF NEW DISASTER PROVISIONS

On April 18, the President signed the Omnibus Budget Reconciliation Act of 1983. Among the provisions in that bill were significant changes to the SBA disaster program, including a reduction in interest rates on SBA disaster loans, retroactive application of several provisions, and a reversal of many of the policies initiated by the Reagan Administration and concurred in by the Congress in the 1981 Reconciliation Act.

In his statement on signing the bill, the President stated:

> Although these (SBA disaster program loans) are subject to ceilings on the total amount of loans made, actual demand for such loans may well exceed those ceilings. I am, therefore, directing the Small Business Administration to control the costs associated with these programs to the maximum extent possible through its implementing regulations. In addition, if necessary to constrain the budgetary impact of these programs, the administration will work with the Congress to enact appropriate modifications of the small business loan provisions.

Question: What types of regulatory constraints could the agency impose to "control the costs associated with these programs?" Will the agency keep this Committee, and the authorizing Committee, fully informed of the regulatory constraints that you impose?

Answer: Various methods designed to keep the program within the Congressionally mandated constraints are under consideration. These considerations are in the preliminary stages and it would be premature to go into detail at this time. Of course we will keep all Congressional Committees informed and will, if time permits, publish appropriate regulatory contstraints for public comment before they are finalized.

FUNDING OF MANAGEMENT ASSISTANCE PROGRAMS

Question: How much is the agency asking for the Small Business Development Center (SBDC) program for Fiscal Year 1985?

Answer: $22 million is requested for Fiscal Year 1985.

Question: How many SBDC's have been approved? How many are awaiting approval? Will the request for $22 million be sufficient to fully fund all of the centers for Fiscal Year 1985?

Answer: Thirty-two SBDC's have been approved. There are presently six states with proposals in process. These six will likely be ready for funding in early FY 1985. The $22 million funding level should be adequate, particularly with the tighter requirements for matching dollars required in the pending legislation.

Question: What is the total amount the agency requested for the Small Business Institute program, regardless of the source of those funds? How much of the $22 million in SBDC funds are to be used to pay for the Small Business Institute program by those schools which have SBDC's and which manage the SBI program in their institution?

Answer: The total amount requested, specifically identified for SBI was $1.5 million. The amount to be spent through SBDC's was an additional $1.450 million.

Question: There appears to be some confusion about an interpretation of a provision in the Senate-passed legislation extending the SBDC program (S. 1429) regarding to the funding interrelationship between SBDCs and SBI. Has the agency interpreted this authorizing language as precluding the SBDC from having anything to do with the Small Business Institute program?

Answer: The Agency has not interpreted the legislative language of S. 1429 on the funding relationship between SBI and SBDC's as precluding a relationship between SBDC's and SBI's. We have interpreted it as prohibiting the use of SBDC funds for the SBI Program.

SUBCOMMITTEE RECESS

Senator WEICKER. The hearing is now concluded, and the subcommittee will next meet on May 2, tomorrow, at 9:30, when we will receive testimony from the Legal Services Corporation.

Mr. SANDERS. Thank you, Mr. Chairman.

[Whereupon, at 3:44 p.m., Tuesday, May 1, the hearing was recessed, to reconvene at 9:30 a.m., May 2, 1984.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

WEDNESDAY, MAY 2, 1984

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:30 a.m. in room S-146, the Capitol, Hon. Warren Rudman presiding.

Present: Senator Rudman.

LEGAL SERVICES CORPORATION

STATEMENT OF DONALD P. BOGARD, PRESIDENT

ACCOMPANIED BY:
- DENNIS DAUGHERTY, VICE PRESIDENT—OPERATIONS
- CHARLES WHITE, COMPTROLLER
- ALAN R. SWENDIMAN, GENERAL COUNSEL
- JAMES STREETER, DIRECTOR, GOVERNMENT RELATIONS
- GENE POTACK, DIRECTOR, OFFICE OF FIELD SERVICES

INTRODUCTION OF WITNESSES

Senator RUDMAN. The subcommittee will come to order. We are going to hear testimony this morning on the Legal Services Corporation's fiscal year 1985 budget request.

Mr. Bogard, President of the Corporation, is present.

Mr. Bogard, it is a pleasure to have you back here. We would like you to introduce your associates for the record and proceed with your statement or summarize it, and we will have a number of questions we will deal with.

Mr. BOGARD. On my far left is our Acting General Counsel, Alan Swendiman: on my immediate left is Dennis Daugherty, Vice President for Operations; on my right is Charles White who is our Acting Comptroller. We do have prepared remarks which I would like to submit for the record.

PREPARED STATEMENT

Senator RUDMAN. The entire statement will appear in the record.

[The statement follows:]

PREPARED STATEMENT OF DONALD P. BOGARD
PRESIDENT
LEGAL SERVICES CORPORATION

Thank you for giving me this opportunity to appear before this Committee. I am here to ask for your support for expanding and improving this program. For fiscal year 1985, we are requesting $325 million. This represents an 18 percent increase over LSC's current budget and a 35 percent increase over 1983.

Although the request is large, the Corporation believes it is justified because the increase is earmarked for specialized direct delivery of services to underserved clients such as the institutionalized elderly and handicapped and the rural poor who cannot be served simply by increasing the size of existing programs.

This request will provide $8.23 per poor person on an equalized basis for existing programs, an increase of 64 cents per person over our present level, and a 10 percent increase in funding for Native American programs. In addition to substantial increases for current programs, the proposed budget provides for $7.2 million for the institutionalized elderly and handicapped, and $2 million to meet emergency special needs created by natural disasters or sudden economic setbacks. It provides $1 million for technological improvements for our recipients and $20 million for private attorney cases which can be targeted to meet needs of rural areas or to take advantage of the efficiency and effectiveness of legal clinics or attorneys with specialized experience. The Corporation plans to hold all corporate costs and other expenditures to their current levels.

I am concerned that the requirement for distribution of our grant funds mandated by language in the 1983 and 1984 appropriations measures has resulted in severe inequalities of access to legal services among the nation's poor. In 1983, funding ranged from $4.23 per poor person in a California program to $17.20 for our grantee in Alaska. Eighty-three programs received less than $6.00 per poor person and 134 received less than the $6.63 we could have provided had we been free to distribute funds on an equalized basis.

The situation has improved somewhat under the 1984 appropriations, but funding levels still range from $6.80 in the majority of our programs to $18.06. If our 1984 appropriation were to be distributed in direct proportion to the poverty population count of the 1980 census we could fund each of our programs at a level of $7.59 per poor person. Instead, under the formula of our appropriations bill, 107 out of 287 basic field programs are funded at 80 cents per person below that level.

The impact of these discrepancies on potential clients seeking service can best be understood by examining two legal services programs serving roughly the same number of poor people. According to the 1980 census, the Rural Legal Aid Society of West Central Ohio serves 57,829 persons with incomes below the poverty threshhold. In 1984, this program is receiving $393,174 to serve those people, or $6.80 per poor person. Alaska Legal Services on the other hand serves 55,898 people or roughly 2,000 fewer than the number with income below 100% of poverty level served by the Ohio program. It is receiving $1,009,640, or $18.06 per poor person. There is no question that their cost of delivering services exceeds that in Ohio, but does it warrant a grant almost three times as large? What does the $600,000 difference mean to clients? It means that people with serious high priority legal problems are being turned away in Ohio while persons with less urgent problems can be served in Alaska. Last year the discrepancy was even greater, when the Alaska program received $961,000 (or $17.20 per poor person) compared to $335,857 (or $5.81 per poor person) for the Ohio program.

Having said this, let me emphasize that we are not advocating that legal services funds be allocated solely on the basis of the 1980 census poverty count. There have been significant shifts in the location of the nation's poor since 1980 as a result of such things as high unemployment in the coal, steel and auto producing areas. In addition, the poverty count does not take into consideration the fact that regional differences in the cost of living may make it as difficult for a client to afford an attorney in San Francisco or Seattle on an income of $11,100 as it may be on a $9,000 income in the rural South.

NEW FUNDING FORMULA

Our Board of Directors is currently considering a proposal made by a consultant to the Corporation for a new funding formula. Dr. David Peterson, an economist who has done work on this subject for HUD and Farmer's Home Administration, recommends that our funds be allocated on the basis of the following four factors:

1. 1980 census data on the number of poor in each area in 1979 to be updated on the basis of the latest Current Population Survey data for groups of states — which he suggests receive a weight of 70 percent initially, with lesser weight to be given as the 1980 census data grows older;

2. A Rent-Cost/Income ratio — that is — the number of persons with incomes below $5,000 who must devote 35 percent or more of their income to rent, with a suggested initial weight of 20%;

3. Job lag — the degree to which the growth in the number of

employed persons lags behind the national rate of growth, with a suggested weight of 7.5 percent; and

4. Unemployment — with a suggested weight of 2.5 percent.

Finally, he suggested that we set aside a small amount of funds to make supplemental grants to grantees in areas with exceptionally high costs of living such as San Francisco, Alaska and Hawaii. Our staff also has recommended that a small sum be reserved for supplemental awards to programs serving rural counties with exceptionally low population density.

Our Board of Directors has not yet made a final decision to adopt Dr. Peterson's formula. We believe that a multi-factor formula can more accurately reflect the relative need of various communities for legal services funding than a formula tied solely to the poverty count. We also believe strongly, however, that funds should be allocated on the basis of current demographic data, not on the basis of outdated 1970 census data and not on the basis of arbitrary decisions made by OEO officials 20 years ago. That is what Congress has done by requiring that the great bulk of our funds, the first $197 million of basic field funds, be allocated just as it was in 1982 when county level 1980 census data was not available.

In that connection, I should point out that the reauthorization legislation reported by the House Judiciary Committee last year would have required that the 1984 grants be made in direct proportion to those 1982 grants. This could have meant that the Legal Aid Society of Orange County, California would have had to settle for $4.83 per poor person when the appropriation was large enough to support $7.59, while Alaska Legal Services' funding would have risen from $17.20 to $19.63 per person. I do not think that is what Congress wants, but that is what the House Judiciary Committee bill would have done. I urge you and your colleagues to give the Corporation, which you created to manage this complex program in an efficient manner, the authority to make allocation decisions.

There are 622,000 attorneys in the country and by the middle of the next decade there will be over one million; 5,000 work in LSC funded programs. With that ratio and considering the federal deficit and all the worthwhile but competing demands of our tax dollars, it is obvious that the private bar must play an increasing role if we are to expand service.

PRIVATE BAR INVOLVEMENT

Congressional interest in greater participation by the private bar in legal services delivery and the Corporation's commitment to leveraging its appropriation to secure additional legal assistance from the private bar are beginning to pay major dividends. For example, the IOLTA program, which we discussed last year, has now been approved in 21 states.

LSC made a grant of $200,000 to the Florida Justic Institute to assist states in studying the adoption of this program. In California, $6,000,000 is expected to be raised through the IOLTA program during this year. Considering the fact that LSC grants to California programs total $21,300,000, it is obvious that this 29% increase in funds can play a major part in expanding the delivery of legal services.

Florida last year distributed over $1,500,000 in grants to legal services providers.

Private attorney involvement is increasing in other ways, as well.

Our local grantees are expected to allocate 12 1/2% of their funds to PAI and this will substantially broaden and diversify the participation of attorneys in delivery of services to poor clients.

We are studying the use of law schools and legal clinics, two delivery mechanisms which hold great promise for cost effective delivery.

I want to call to your attention a particular problem we have which may require legislative relief. Although LSC is a private 501(c)(3) corporation, our employees are treated as employees of the United States for purposes of Civil Service Retirement. Because of our unique status, we are subject to double withholding, that is full withholding from wages under both FICA and CSR. I do not believe Congress intended this result and I ask for your help in correcting this problem. The Ways and Means and Means Committee has indicated that the issue should be addressed by our authorizing Committee, but there is no agreement to take up a Legal Services reauthorization bill this year. The Senate Finance Committee included corrective legislation in the bill which recently passed the Senate. If this bill is not enacted, it is possible that the only legislation affecting the Legal Services Corporation which passes this year will be our appropriations bill and we will need your help.

I am enthusiastic about the taks of delivering legal services to our clients, and I am pleased to report that we close over one million cases a year. There are problems only a lawyer can help someone with and we do not have a budget large enough to meet all the demand for those services which only we can provide. That is why it is wrong to allow our limited resources to be diverted into lobbying or creating political networks or coalitions.

I want to express my appreciation for the time and attention you have been willing to devote to LSC. I realize that the GAO and the Senate Labor Committee recently documented serious instances of wrongdoing at the Corporation, but I want to state strongly that the charges made against legal services do not in any way diminish my belief in the need for a strong, independent legal services program. When this program does what it was set up to do — the delivery of legal assistance to low income individuals — it has public support. It is only when the resources of the program are diverted from legal assistance and used for political purposes that the program suffers and, more importantly, that the poor people we are supposed to serve, suffer.

BUDGET REQUEST

Mr. BOGARD. If I may just point out some of the high points of that testimony, we are here asking for a budget for fiscal year 1985 of $325 million. This represents an 18-percent increase over 1984 and a 35-percent increase over 1983. If we were given that money, it would provide for an equalized funding level of $8.23 per poor person, which is a 64-cent increase over 1984. That amount of money would also provide a 10-percent increase for Native American funding and then several separate pots of money for particular programs—$7.2 million for the institutionalized elderly and handicapped; $2 million for emergency special needs created by natural disasters or sudden economic setbacks; $1 million for technological improvement; and $20 million which we would like to put into specifically targeted bar programs.

MALDISTRIBUTION OF FUNDS

We intend to hold Corporation costs and all other expenditures at their current levels. We are very concerned about the maldistribution of funds that exists in our programs. In 1983, that funding ranged from $4.23 per poor person up to $17.20. In 1984. that has increased. The range is $6 to $18.06, but there are still 107 programs at the $6.80 level, which is the bottom level.

If the funding we received this year would equalize it, it would be $7.59 per person. In an effort to come up with a more equitable way to distribute the funds, we hired a Ph.D who has done work for us, Dr. David Peterson. Dr. Peterson came up with a four-factor formula which we discussed a little bit in our testimony.

Basically, what it provides is we would use the 1980 census level which would be 70 percent of the formula, and that would be reduced over the next few years, as the data becomes outdated. Then a ratio of rate cost and income would be assigned 20 percent of the formula weight.

Job lag—the degree to which the growth in the number of employed persons lags behind the national rate of growth, with a suggested weight of 7.5 percent. There would also be provisions for increases in certain areas because of exceptionally high cost of living.

We feel if we are able to use that sort of formula which has not been adopted yet by the Board, that we would probably provide a much more equitable distribution of funds for the actual poor people's needs in various areas. We are interested in trying to increase services as much as possible. We think one of the ways to do that is through involvement of the private bar.

PRIVATE BAR

There are some 620,000 lawyers in the country, about 5,000 lawyers in our programs. There are 35,000 or 40,000 new graduates each year, and by the mid-1990's, there are going to be over 1 million private attorneys. We think it makes good sense to increase our use of them and get them involved in our programs. Unless there is a significant increase in funding, the only way we can get a significant increase in services is through the utilization of the private bar.

The Board adopted a resolution last year which increased the 10-percent requirement established in 1981. It is now 12.5 percent of the recipient's budget has to go to encourage private bar activities, but we were trying to get them involved in addition to that 12.5 percent through programs of the Corporation.

IOLTA

One of the programs which we have been involved in trying to assist in the development is the IOLTA program. We talked about that when we were here last year. There has been a significant increase in that across the country. There are 22 States which have now adopted the IOLTA programs, and we provided grants of around $400,000 to a national clearinghouse to try to disseminate information on this program as well as small grants to States so that they could develop and implement programs.

It holds significant promise for the funding of Legal Services in a supplemental nature. California is collecting nearly $6 million a year through their IOLTA program. And Florida is the grandfather of the program and they collect about $1.5 million a year.

If you take into consideration that LSC gives California about $21 million a year, the addition of $6 million more through IOLTA is a 29-percent, 30-percent increase. Your State of New Hampshire, I understand, is going to get $135,000 this year through the IOLTA program. We also tried to get new programs through our demonstration projects that we are working on this year.

PRIVATE CLINICS

We are very excited about our private clinic model which we have started. We have advertised for law firms or clinics to handle specific repetitive, simple cases, and we have done that in Jacksonville, Phoenix, Austin, Tex., Des Moines, and Pittsburgh.

We just recently—last week, as a matter of fact—have given the first set of grants out in that program in the Jacksonville area. We had significant response, over 30 people and firms requested information on the project after it was advertised. We have had a good, close working relationship with the Jacksonville Bar Association and Jacksonville Legal Aid Society, and we have targeted about $370,000 for that area to handle 750 divorces, social security cases, and juvenile dependency cases.

As a result of the open-bid procedure, we got the same number of cases handled for $139,000. We think it has just a tremendous potential for increase in services to the organization. We are going to be nearly a third of what we had anticipated, and if that holds true across the 8 cities we are planning to use, then we will probably be able to double this and go to 15 to 20 cities for this project.

LAW SCHOOL CLINIC PROGRAMS

We allocated $1½ million for it and think it will significantly increase the number of people we serve. We are also involved in law school clinic programs. We sent out notices to 190 law schools that we were going to put $1.2 million for 12 demonstration projects, $100,000 apiece where law school seniors who work under an attorney to handle the simple repetitive-type cases that they are allowed to participate in in their Supreme Court issues practice.

We received 68 proposals for funding on those, and we are in the process of evaluating them now. We think that is another good way to get people served.

CORPORATION RETIREMENT PROGRAM

We think it is a good program for us. We do have one problem I would like to specifically call to your attention regarding our particular employees of the Corporation.

There was an amendment to the Social Security Act last year which made our employees, who are under the act, Federal employees for purposes of civil service retirement, made 501(c)(3) corporation responsible for social security.

Our employees of the Corporation are, thus, paying social security as well as civil service retirement. It amounts to 13.7 percent of our wages coming right off the top, and it has had some impact of people wanting to stay, as well as recruiting new people for positions.

So if there is some way to get that amended——

Senator RUDMAN. Has anyone brought that to the attention of the appropriate people in the Senate Finance Committee?

Mr. BOGARD. Yes, Senate Finance Committee has put some language in.

That basically concludes our remarks. We want to thank the committee for its attention to Legal Services and we will be glad to respond to any questions we can.

CORPORATION NOMINEES

Senator RUDMAN. Mr. Bogard, we have a number of questions here for the record to a large extent because no one is really sure what is going to happen in terms of the nominees that are currently before the committee, which I understand are being considered, or possibly considered, if that committee achieves a quorum today and is able to proceed. That has been a problem in the past, for a variety of reasons.

If, in fact, it does, I understand there are several of the nominees who may not be acceptable to the committee, but are very important to the administration. If that were to happen, learning from history, I assume we might not have any nominees, although I don't know that.

That being a possibility, I am going to go into a number of fairly detailed questions here today hoping that it won't be necessary to have the kind of language that we have had over the past several years.

I have said repeatedly I would prefer to see a full Board and let them run the Corporation, and the Congress ought not to—in the past we felt we had to have more involvement than, frankly, a legislative branch ought to have.

Having said that, let me get these questions for the record, and if you would like to call on your colleagues for answers, that will be fine. Keep your answers brief, if at all possible, because I do have a fair number of questions I intend to get in the record today.

PEOPLE BEING SERVED BY LEGAL ASSISTANCE

First, basic information, what percentage of eligible individuals needing legal assistance are currently being served?

Mr. BOGARD. We have no concrete figures on that. We suspect we are serving somewhere between 20 percent and 40 percent of those who are eligible for services.

Senator RUDMAN. Forty percent would be a high; 20 percent a low?

Mr. BOGARD. Yes.

Senator RUDMAN. To what extent are programs around the country serving only, or primarily, emergency needs as opposed to more routine cases?

Mr. BOGARD. I think it varies from program to program, but there are a number that are just able to handle emergency needs.

On the other hand, there are programs which appear to process most, once people come in. It depends on the area and level of funding.

NON-LSC FUNDING

Senator RUDMAN. Have the non-LSC funding efforts to serve the poor increased or decreased in recent years? Do you have any estimate?

Mr. BOGARD. They have increased.

Senator RUDMAN. By very much?

Mr. BOGARD. Yes, sir; last year, when we were here, we were talking in the neighborhood of $50 million of non-LSC funds for the program. This year they are estimating $63 million in non-LSC funds.

Senator RUDMAN. You referred in your statement to some of these initiatives—Corporation budget of $20 million in 1985; an increase in your budget for a new program entitled, "New Directions for the Private Bar." The budget justification does not provide any details as to how the program will work. We would have expected normally to have some budget justification. It could well be that the program was not fleshed out by the Board when the justifications were first prepared.

Can you tell us now how the $20 million will be used, and how grantees will be selected, and what parts of the country will be served? If you want to expand in a supplemental justification, that will be fine, but something for the record.

Mr. BOGARD. Sure. We don't have any hard and fast criteria set up on how we plan to use it. We would, however, expect that if the private fee for clinic models is successful, that some of that money would be pointed in that direction, some would be pointed in the law school clinic areas.

We also would like to use it to target certain areas where service isn't what it should be. For example, in rural areas and in areas like that. It would not be restricted to any particular use, any particular geographic location. We can open it up for competitive bids as the need is there and try to use it to increase services in those areas where it is not being met now. I will be glad to expand on it.

DISTRIBUTION OF FUNDS

Senator RUDMAN. I think probably we would like to see how you intend to balance distribution of these funds. Obviously, if you have an area in which more than emergency services are being performed, that might not be a target. On the other hand, there are numerous areas of the country that obviously could use this kind of a program, and I suspect the committee would feel it important if they had some rationale, some standard, if you will, for distribution of those funds to be sure they are distributed in a fair and impartial way, not necessarily geographic amounts, but need amounts.

What steps are you going to take to ensure that if, in fact, you go ahead with this program, the $20 million would add to rather than supplant what the private bar is already doing in nonfederally supported efforts to provide legal services to the poor?

Mr. BOGARD. We are continuing to monitor the results of private attorney involvement, and we suspect we will have some good figures on these demonstration projects, particularly the law firm legal clinic model, in a very short period of time because this money is going directly to local firms and be an instant turnaround on services. We feel that would give us good figures on how successful the $20 million should be, and then monitor that during the year.

SERVICES PROVIDED TO RURAL AREAS

Senator RUDMAN. On that point, your justification states that the $20 million will be targeted to meet the needs of rural areas or to take advantage of the efficiency of legal clinics and attorneys with specialized experience.

I have a series of questions on this point for the record. Having not necessarily a point of view myself, nor do I know if the committee has any statistical data to have an opinion, could you summarize for us the data or study results that you have which demonstrate, for instance, that private legal clinics can provide the services more efficiently and effectively to poor people than the existing programs.

Do you have any empirical data as of this point, or is the $20 million going to try to demonstrate that?

Mr. BOGARD. The million and a half we are using this year will help to demonstrate for the $20 million. We do know the litigated cases that are handled by our programs through the private bar comprise a larger percentage of the cases that they receive.

So, therefore, you can't really say 10-percent money generates 10-percent cases. Actually, 10-percent money which we are using now is getting about 20 percent litigated cases. So we find the local programs tend to hand out those cases that are litigated on a repetitive basis and keep the advice and counsel on those type cases they can handle quickly and expeditiously themselves.

We are almost comparing apples and oranges when you try to come up with statistics. We do feel the bids we are getting on these clinics are so phenomenal that it is going to show we can handle those simple cases very efficiently.

COMPETITIVE BIDS

Senator RUDMAN. In your opening statement, you mentioned the *Jacksonville* case and referred, I believe, to 750 divorces that were going to be handled at a per capita cost of how much?

Mr. BOGARD. We have a bid of $75 per divorce and $85 for—up to 750 is $75 per case; 500 was $85.

We have had some testimony in some of our committee board meetings that some programs are able to handle divorces for $125. Some are higher, in the neighborhood of $200. We feel if we can get a bloc of those cases and say we are going to guarantee you 500 cases of uncontested divorces, what can you do? And they will come in very competitively.

VARIETY OF GENERAL CASES

Senator RUDMAN. What kind of cases would fall into the general hands of what you are speaking of?

Mr. BOGARD. Bankruptcy, social security, juvenile dependency cases, things like that, wills; a lot of older poor people who don't have wills but would like to have them. Give somebody 800 wills to crank out, they can do it very competitively.

This is Gene Potack who is in charge of our field programs.

Mr. POTACK. Sorry I came in late. I had an emergency dental appointment.

Just briefly talking about the $20 million though, certainly everybody agrees there is a great need out there for additional funding for legal services, we asked for $20 million for private bar, which is a lot less than several groups have stated would be necessary in terms of requests of the project advisory group, for example.

In the rural areas, I think everybody agrees those areas were neglected for over 10 years. Since the time there was federally funded legal services until 1978 or so, the rural areas of the country were without federally funded legal services. After expansion into every county in the entire country, there was a 25-percent cut. Over the last couple years, we have heard of hundreds of branch office closings, and I don't have the exact figures, it might be a lot more than that, like a thousand, I am not sure. I can look into that and get back to you with the exact number.

So what we have after 10 years of federally funded legal services for poor people where they were discriminated against based on where they reside—in the rural areas—now we are seeing the same thing happen again. The services that are delivered in those outlying areas are not as substantial as the services that are delivered in the more metropolitan areas, and we are also being told at the same time that pro bono is saturated.

A representative of the St. Louis Bar Association recently testified that if we increased 10 percent to 12.5 percent, they could not handle that because they were getting as much pro bono as they could. One solution to this problem is to have some kind of partially compensated delivery system or contract services so those rural people are not discriminated against based on the mere fact they happen to reside in a rural area, and this money can be used for that.

Also, we just passed the priorities regulation. When you talk about minimum access, the idea being that people everywhere should have reasonably equal access to services, I think this $20 million can go a long way toward making that a reality rather than continuing this kind of discrimination.

[CLERK'S NOTE: The following clarification was received by the committee subsequent to the hearing.]

LETTER FROM DONALD P. BOGARD, PRESIDENT, LEGAL SERVICES CORPORATION

SEPTEMBER 26, 1984.

Hon. PAUL LAXALT,
Chairman, Subcommittee on Commerce, Justice, State and Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Mr. William Reece Smith, Jr., has disputed a statement attributed to him in LSC's answer to the committee's question regarding the private bar involvement increase from 10 percent to 12½ percent. While the reported statement accurately reflects the record of the meeting, LSC should clarify that Mr. Smith urged moving to the 12½ percent level before going to the 15 percent level being discussed by the Board. He did not make any statement, one way or another, regarding an increase from 10 percent to 12½ percent.

Very truly yours,

DONALD P. BOGARD, *President.*

QUALITY OF SERVICE

Senator RUDMAN. There is no question that kind of experimentation ought to be done. One of the things I think we ought to be very careful about is that there is more to legal services than cost alone. I hope the quality of the services is not going to suffer. For instance, talking about the divorce actions, I understand what you are saying, and maybe that is the way it has to go.

On the other hand, I wonder maybe if some of those situations might not end up in a divorce that would not otherwise, and we have children involved in many cases, if they were not being handled on a mass-produced basis. Maybe that is nothing we can deal with. Maybe the Legal Services people are not dealing with them at all because they don't have the time.

It just seems to me you ought to be very careful. If somebody gives you a bid, if you give them 10,000 divorces and pay them $50 apiece for them, they will get a computer, word processor, and put an ad in the paper to solicit divorces. I say volume and price alone in the delivery of legal services, although important, cannot be the only consideration. Poor people ought to get, theoretically, the same kind of counselling and help that rich people get. We know that doesn't happen. It will be a long time before it happens in this country.

We ought to make an attempt to handle more than just pieces of paper. I am not saying that as being critical of your program. I am saying it is something you ought to be concerned about.

Mr. BOGARD. One of the ways we are addressing that, for example, in the Jacksonville area, our grantee in that area will do the intake and screening and referral into the program that got the award for the divorce. If it is not a divorce a person needs, then it won't go——

Senator RUDMAN. That is certainly a very good safeguard. I am glad to hear that.

If you would like to give us additional evidence for the record that indicates to you the needs for the rural areas that are not properly being met, let us know.

Also, for the record, if you would please give us an estimate of what your cost would be to expand the rural services capabilities of existing programs, vis-a-vis what you are proposing.

Mr. Potack. In terms of quality, Senator, when I became Director of Wisconsin Judicare in June 1978, it was the only judicare program in the entire country that was funded by the Legal Services Corporation. The West Virginia program had temporarily suspended their judicare component.

There is no question but that private bar delivery through a partially compensated system was not favored by OEO and subsequent administrations. The one argument that was constantly thrown in our face was the quality argument, that these private attorneys, because they are delivering services for less than their paying clients would pay, the quality would, therefore, not be there and they would put those cases on the back burner. There was never any proof of that. There were never any client complaints or other proof to support that argument.

One reason for this is that there was a guaranteed payment in each of these cases. Private attorneys did not have to worry about not getting paid. Another reason these attorneys provided quality legal services is because they chose to participate in the program and accepted reduced fees as part of their professional responsibilities to serve those unable to afford legal services.

Senator Rudman. The practice of law has changed dramatically in the last years due to FTC action, Supreme Court actions. It is much more competitive.

That is not true just for the poor people. We all have access to legal services, at much lower costs than 10 years ago. Let me go on.

BUDGET INCREASE

The Corporation's proposed budget provides for a $29.2 million increase for basic legal services. This money would be used in three ways: First, $20 million to provide an average increase of 66 cents per poor person, 8.7 percent; second, $7.2 million for services to the institutionalized elderly and handicapped; and third, $2 million to meet emergency special needs created by natural disasters or sudden economic setbacks.

You don't provide details as to how the $7.2 million and $2 million will be actually used. Under what circumstances and for what reasons will the $2 million for emergency special needs be used? What criteria has the Corporation developed for the use of those funds, and how was the $2 million figure arrived at?

Mr. Bogard. In inverse order, the $2 million was a staff compromise. We had no particular funding level established. We had a number of discussions about it. We thought if there were cases that could be handled at $200 a piece, we could handle 10,000 cases, however many that worked out.

There was no magic in selecting a figure of $2 million. We thought that it was very essential to have some flexibility in funding or that if there was an example like in Laredo, Tex., where the peso was devalued and businesses suffered and bankruptcies mushroomed and people couldn't be served by the local program, you could put money into that area as the recipient in that area applied for it in order to help services for an immediate problem.

Or if there is a significant economic disaster, a drought, something, that affects the farm areas, then programs in the area affected would simply contact the Corporation for funding, make a grant proposal which would have to be appropriate grant proposal and well documented as to the need, and then funding could be given.

We don't have any set criteria now saying when you apply for whatever emergency you have later on, you have to meet these needs.

We will try to be as flexible as we can so the programs who really need the assistance of emergency needs will get it.

INSTITUTIONALIZED ELDERLY AND HANDICAPPED

Senator RUDMAN. Let's move on. How will you use the money for the institutionalized elderly and handicapped? Will they go to the National and State support centers that have experience in these areas?

Mr. BOGARD. These are directed for actual services. If there are institutionalized people in the area of the recipient, they are not counted in the poverty population. We figure there are 1.8 million institutionalized, elderly and handicapped. If we can provide services at the level of $4 apiece, we can serve those people which are now not being served. So it would be dependent upon where the people were located as far as in what area of the country or in what area of their recipient's program. They would make an application for funding to provide for lawyers to go into the community, into the institution, assess needs as people have them.

Senator RUDMAN. Have you developed criteria yet?

Mr. BOGARD. No, we haven't, we are in the process of working on that.

Senator RUDMAN. Would you supply us with those when you are finished with it?

Mr. BOGARD. Yes, sir.

Senator RUDMAN. I just had really one other question on the institutionalized elderly and handicapped. What kind of cases would you visualize to be serviced here? For instance, class-action suits against the Government in some cases?

Mr. BOGARD. We have really not precluded anything. Whatever needs people in that area have would certainly be eligible for the local program to make the determination.

Senator RUDMAN. I would like you to expand on that answer for me. That is very important. I don't disagree with that earmarking of those funds. Those people have very special kinds of requirements, usually they are not individual requirements as much as they are class requirements.

NATIONAL AND STATE SUPPORT CENTERS

Your submission provides for no increase for the National and State support centers. These are the only service programs for which no increase was recommended. There was no reason in your justification. Can you tell us why, for the record, there was no increase for these centers?

Mr. BOGARD. There is about $15 million being set aside for them now. We are doing a study on State and National support. We are not sure what recommendations will be made as a result of that study, and we feel without having a good solid basis for recommending some increase, we would try to continue to develop the material and information we are developing now and make a recommendation at the end of this year.

Senator RUDMAN. When will your study be done?

Mr. BOGARD. We hope to have it done by fall.

Senator RUDMAN. I assume the committee will receive a copy of that.

Mr. BOGARD. Sure, we are in the process of doing various phases of it. We had a national study undertaken by a survey firm to get the needs of our recipients determined for State and National support. That was the first phase of the study. We are reviewing materials we had on hand, things like that. It is an ongoing process.

FUNDING FORMULA

Senator RUDMAN. I want to talk about the funding formula you discussed in your opening statement. What would the impact of that be in various parts of the country? Do you anticipate running the numbers you already have through that formula, the existing programs in the country? Will there be any upward or downward shift in funding to some of those field programs?

Mr. BOGARD. Dennis Daugherty has been working with that.

Mr. DAUGHERTY. There would be a significant increase, for example, in New York because of looking at housing costs as a percentage of income. The factor would count the number of persons spending more than 35 percent of their income on housing, but whose income level is below the $5,000 level.

There would also be major increases in most of the industrial States where there has been significant unemployment lately and where the growth in number of jobs has lagged behind the Nation as a whole. Michigan, Ohio, Pennsylvania—those are the major States that would increase.

Senator RUDMAN. Where would the major decreases take place?

Mr. DAUGHERTY. Decreases are fairly even across the balance of the States. Of course, as we move toward using more recent data rather than being dependent on 1970 data, on which our current funding is largely based, then it is the Southern States in which there is the largest decrease.

Senator RUDMAN. You have a small computer program that you now have developed to plug in these various numbers to come up with the answer?

Mr. DAUGHERTY. We have done so, sir. We will furnish that for the record. We have not yet made the cost adjustments we think ought to be done for States like Alaska and Hawaii.

Senator RUDMAN. I assume all you have to do is take the data you have, put it into the computer and it tells you what the per capita expenditure ought to be. Is that about the way it works?

Mr. DAUGHERTY. We use the data that is available from the Bureau of Labor Statistics and from the Census Bureau.

Senator RUDMAN. You take that data, put it into your formula, and come up with an answer. Please supply for the record under that formula what the basic services amount would be and the percent of change from 1984 to 1985. We would like that.

Your statement, of course, focused on the large per capita amount received by Alaska Legal Services. It is my understanding there are only about five programs receiving more than $13.20 per capita; the overwhelming majority are funded at between $6 and $10.

Mr. DAUGHERTY. As Mr. Bogard mentioned, there are at the bottom——

Senator RUDMAN. From our perspective, one of the formulas we adopted last year in the process of equalizing involved—which we all support in this committee—both those funded at the high level and low level. There was good support for the formula. Tell me about your discussions with people around the country about this new formula. Have you discussed it with most of your field people?

Mr. BOGARD. We had a meeting in New York at which the proposal was discussed before the Board. We had field program directors in to discuss how it would impact upon them. There have also been committee meetings——

Senator RUDMAN. What was the reaction of the field directors?

Mr. BOGARD. The reaction, if I would summarize it, we think it's a nice equitable point to make to try to use other factors than simply census and equalize the level out and equalize the factors involved, but we don't want to see any tremendous changes in funding per grantee; we don't want the upper programs to suffer. We don't want the lower programs not to get more money. They think it is a good idea.

I think uniformly, they felt it was a more fair adjustment than what had been used in the past, but they didn't want to see any drastic changes, particularly in the higher levels.

Senator RUDMAN. When could you have this printout for us, if you will, of the previous question I asked you, Mr. Daugherty?

Mr. DAUGHERTY. We will get it for you next week.

AFFIRMATIVE RIDER

Senator RUDMAN. We would like that. We have a lot of questions about that. I want to talk about our affirmative rider.

The budget justification states: "Because the affirmative rider requires 1984 money to be spent according to grants made in 1983, the Corporation is unable to renew multiyear grants made in prior years." That is the end of the quote.

As I recall, the proviso referred to annual funding levels, not to the awarding of grants. Can you explain that statement? I don't really understand the statement.

Mr. BOGARD. We felt as we interpreted that rider that the funding given to us had to be allocated in a specific manner which then didn't leave us any additional funding to use for one-time special grants that had been issued in prior years. Therefore, if there was something, for example, like the training centers which had gotten several hundred thousand dollars to exist, those were one-time grants. When they expired, there would be no discretionary money for us to use to refund them because all the money that we received was to go to fund the field level programs as they were, plus the increase.

So there wasn't any additional money there available for us to assess those one-time grants.

Senator RUDMAN. Can you tell us what grantees who received multiyear grants in 1983 had their funding terminated in 1984 as a result of the proviso?

Mr. BOGARD. We attempted to terminate the funding for the regional training center. That was not in 1983; it was 1982, I believe, and it was carried over. There was a court suit on that and injunction issued to prevent that, and that case is currently on appeal.

LITIGATION

Senator RUDMAN. You have had a number of cases, haven't you, that involved half a dozen items of litigation. Have you won any of them?

Mr. BOGARD. Yes, I think so.

Senator RUDMAN. Which ones have you won?

Mr. BOGARD. One on fund balance we won. One on fund balance we lost. A couple that are pending. No decision. An initial injunction was issued on the Sunshine Act case regarding a Board meeting; that is, the meeting was subsequently noticed again and held. The judge did not discuss the case as moot, however. He felt we raised points that were worth consideration.

There is no doubt we have taken our lumps on some of them.

Senator RUDMAN. Who represents the Corporation when you get sued in these kind of lawsuits?

Mr. BOGARD. We used outside counsel in some cases where we don't have particular expertise or time to handle it. Mr. Swendiman handled a number for us.

REPORTING REQUIREMENTS

Senator RUDMAN. I spoke several months ago to the executive director of the New Hampshire Legal Assistance and had a meeting with him and some of the people involved in New Hampshire who wanted to talk to me about a number of things. They indicated there was a dramatic increase in reporting requirements.

The first 43 responses to the recent Washington Council of Lawyers' survey of Legal Services field programs are now in. In response to a question pertaining to time spent by management and staff on compliance, 22 percent of the programs said the time spent had increased by 300 percent or more; 13 percent reported 100 to 300 percent; 20 percent reported increases of 50 to 100 percent; 24 reported increases of 21 to 50 percent; only 15 percent said the increase was less than 20 percent, and not one said there was a reduction.

How much have you increased the paperwork burden on some of your grantees? I ask that because I have known the executive director of New Hampshire Legal Assistance for a long time. He is a reasonable person, not given to extreme statements. He was not being vindictive or critical; he was making an observation that there was a tremendous increase in the burden of paperwork.

I feel we ought to get away from that. No. 1, do you agree that has happened; two, if you do, what are you doing about it?

Mr. BOGARD. I would agree there has been some increase. There is not an increase for the sake of making an increase. I am sure you know, we had a number of requests from the oversight committee in the Senate regarding specific information they wanted us to get, information we don't maintain. We had to contact the programs in order to get it. That wasn't just on one occasion, but several occasions.

We did work on eligibility regulations; we made a survey of the programs to find out what kind of information they had on elgibility regs, how were they being compiled to make a more reasonable judgment on eligibility regs and other situations like that.

Frankly, I admit there has been an increase.

Senator RUDMAN. Do you suspect much of that information has been received and the questions of Congress were answered, and you might start in the direction of lessening some of these burdens, or do you think it is going to continue?

Mr. BOGARD. We don't have plans to increase the burden.

Senator RUDMAN. Are you going to decrease the burden?

Mr. BOGARD. I think it would be nice if we could do that. There are some requirements that are going to increase the burden on the program to get this documentation. We don't anticipate anything above that.

Senator RUDMAN. Would you supply for the record those reports you are requiring from your field offices that are specifically required because of congressional requests within the rider and otherwise?

And, secondly, would you supply for the record any new reporting requirement that you have required in the last 18 months, and just a description of what that requirement is.

I am sure you share my concern, to the extent the people are working in the bureaucracy filling our paperwork and not delivering legal services.

Mr. BOGARD. We don't want people filling out reports instead of serving people. Conversely, we want to make sure what is going on is what is supposed to be going on.

Senator RUDMAN. You can't let them operate like a free agent out there, Mr. Bogard, but there is some compromise.

Mr. POTACK. I was a project director through October of last year, so I experienced some of the requests. The majority of those were requests like the request on class-action information. I think there were a couple mailings that came from the Corporation which were straight from, I believe, the Senate Labor Committee.

Senator RUDMAN. I am aware of all those requests. I think we ought to move on here. If you just supply those for the record, then we can quickly see which were generated because of congressional requests, of which I am sure there are many. You might indicate why you thought the ones you submitted were necessary.

REGULATIONS

Let me go on to regulations, guidelines and instructions, if I could.

Obviously, we have had some disagreement on some of those things, and I want to get them in the record today.

The conference report on fiscal 1983 specifically directs the Corporation is expected to make grants under the "same terms and conditions" as in 1982. Obviously, there is an implicit exception for new regulations required to enforce various appropriations riders. Do you believe that all of the new policy changes developed by the Corporation over the last 16 months, such as those pertaining to client eligibility and case priorities, comply with those instructions?

Mr. BOGARD. Yes, I think so.

Senator RUDMAN. Why has the Congress insisted on imposing these policy changes? To the extent the policy changes do not implement various appropriations provisions, why have they been made?

Mr. BOGARD. I think they do implement some of those, but the statute itself—for example, in the eligibility area, there is a statement in the law where we are required to make sure the recipients establish guidelines for eligibility, and we were not believing that was happening. A number came in through our Office of Compliance and Review specifically directed to eligibility.We found something like one-third of the programs out of 75 we surveyed had not established the eligibility guidelines they were required to do under the statute. So we were trying to implement that by making those requirements.

Senator RUDMAN. Were these responses in some cases to specific abuses that had been identified by Corporation staff or by outside sources?

Mr. BOGARD. As I mentioned, the Office of Compliance and Review is something that was nonexistent until April of last year. In the absence of an inspector general function, I created this Office because we were getting a lot of complaints about the program. We received 270-some complaints last year on eligibility and not getting proper service and harassment and things like that. This Office investigated all those complaints. Eligibility requirement was one of the major factors.

Senator RUDMAN. Could you tell us how many of these policy changes were issued without any opportunity for prior public comment?

Mr. BOGARD. Not off the top of my head. I will be glad to take a look at it. I know there are no rules and regulations without public comment. There have been discussions among staff certainly and some representatives of the field on some of them, a lot of them—not a lot of them because we haven't issued that many. Some have not been put out for general policy determination. We will be glad to try to take a look at that and make a compilation for you.

Senator RUDMAN. Would you do that for us?

Mr. BOGARD. Yes.

ELIGIBILITY

Senator RUDMAN. The regulation on client eligibility established a national standard——

Mr. BOGARD. It did. It said the local program would be required to establish eligibility guidelines.

Senator RUDMAN. The national standard established——

Mr. BOGARD. No, sir, we did make some initial recommendations that there be a national study, but those were changed. That particular regulation went through three or four committee and Board meetings. There was a ton of public comment on that. I participated in a hearing before the House subcommittee with Mr. Biaggi. That thing went back and forth for maybe 6 months.

Senator RUDMAN. I may have another question for the record on that. I don't have time today.

EXPERIENCE OF LSC PERSONNEL

How many of your people that you consider to be in the top 15 or 20 policymaking and administrative positions in the Corporation at this time have prior experience with legal services?

Mr. BOGARD. Gene here has 7 or 8 years. Peter Brocaletti, who is with our Office of Program Development, has 5 or 6 years. Joshua Brooks, who is Gene's assistant, is in charge of one of our other units, research unit, has a history in San Francisco. Off the top of my head, there are three that have some significant amounts. I am sure we can give you a list of all of those.

FIELD OFFICE COMMUNICATION

Senator RUDMAN. There have been some complaints, which I am sure you have heard, that you kind of created a distant bureaucracy, and that your communication with your field offices isn't what it ought to be. Is that an unfair charge?

Mr. BOGARD. Yes. We probably could communicate more to let people know what we are doing, but I think we have been in good contact with the field.

Senator RUDMAN. A lot of your field people don't agree with that. They feel communication is not good, not necessarily between you—you are the President of the Corporation—but between your staff and your top staff in the field. It seems to be pretty much with the regional staff. You don't think that is an accurate complaint?

Mr. BOGARD. It is not inaccurate. We could be more forthcoming, I think, in some of the discussions back and forth. I think we have made an effort to communicate what we are doing and get responses from people.

Senator RUDMAN. I don't know whether the problem is perceived or actual. I can tell you there tends to be among a large number of people in the field an "us and them" kind of mentality which I don't think is particularly good for a corporation that has the mandate from the Congress that this one has.

Mr. Bogard. I would agree, there has been much more of a debate or exchange of information, perhaps, in prior years. There are a number of things I simply felt had to be changed, and we talked to some people and there is maybe universal opposition to change in that particular area. It doesn't do any good, in my opinion, to sit there and be harangued about it. Therefore, some of those discussions have been foreclosed, but we should make an effort to be as open as we can about those things we feel we can be, and will do so.

Senator Rudman. I would not suggest you should open yourself up to continual harangue after a decision has been made. You are in charge of the Corporation—you and your Board. To the extent you are not limited by law, you ought to do what you think you have to do. I think the complaint is that some of the decisions may have been made without enough consultation with people they affect. That is the type of foreclosure I am talking about, Mr. Bogard. I think you ought to make efforts to improve that, because I think it will be in your interest.

LOBBYING WITH PUBLIC FUNDS

Let me turn to the lobbying regulation. I have a number of questions on that. As you know, we had some correspondence on that. On what basis did the Corporation, in the regulations adopted Saturday, decide to limit the ability of grantees to respond to requests from elected officials by requiring that the requests be in writing and on a specific matter in connection with an identifiable legislative measure?

What I am really asking is, are you suggesting in this regulation prohibiting a constituent of mine, let's say, who happens to work for an LSC grantee, from responding to a question about the qualifications of a board nominee or anything else I want to ask that person if I call him on the phone during working hours?

Mr. Bogard. Alan and Dennis worked on those primarily. Dennis can respond to that.

Mr. Daugherty. The particular language of which you are speaking was a provision first adopted last year, in March 1983, in regulations implementing the 1983 appropriations language.

In the case of requiring the request be in writing, requests can be documented after information is provided to the elected official, but we do want to have that in the record because there is a general prohibition, as you know, against attempting to influence legislation. We would like to know it was a response to a question from an elected official.

Senator Rudman. Then your answer is yes to that question; you are suggesting that if I call a Legal Services employee or any other Member of the Senate or House or State legislature initiates a telephone call to say, I want to ask you about such and so that is before me, I am soliciting your advice because I think you are in a position to be able to help me with that, that the response you expect your Legal Services employee to give to me or anybody else is, "I will be very happy to answer your question, but put it in writing;" is that what you are telling me?

Mr. DAUGHERTY. The employee would say, "Senator, I would be happy to answer your question, but I would like"—the employee is able to respond to you immediately, but he needs to ask you, for purposes of meeting his documentation requirements, to subsequently send him a letter describing your request.

Senator RUDMAN. He sends me a letter or I send him a letter?

Mr. DAUGHERTY. You send him a letter.

Senator RUDMAN. I try to keep my paperwork down, and I wouldn't send him a letter. I really think this gets a little bit tight. I understand what you are trying to do, and I support it, and if anyone wants to go back and look in the record, I have supported Legal Services employees not getting involved in things they are involved in. I really think this regulation ought to be looked at very carefully because the way it is written, I think it not only is offensive to some people, but——

Mr. DAUGHERTY. It has been in effect for a year, Senator.

Senator RUDMAN. I want to point out to you those limitations were specifically considered during our negotiations here in the Senate on the Legal Services Corporation rider last fall. That kind of language was rejected.

Are you aware of that? We will supply you with the record of those discussions.

Mr. DAUGHERTY. That would be helpful, Senator. We had that in our regulations in March 1983. There is nothing in the legislative history indicating Congress disagreed with the regulations we adopted at that time.

Senator RUDMAN. Are you telling me this regulation is identical to the previous one?

Mr. DAUGHERTY. Yes, sir.

Senator RUDMAN. I just don't agree with that. I don't know if we have a copy of that here. We will look at that, and I will get back to you on it. Whether you did or didn't, I just think, if you want to impose a regulation on your employees that they will make a record of that within a log that they keep of communications, call it lobbying communications log, and they will so enter it, fine, but to expect a person—it is easy for me to do, but if a New Hampshire legislator who has no staff and gets paid $100 for 2 years of service as a legislator in our State wants to call up Legal Services and asks about something to get their opinion, they might be the people they would go to, they are good people, they have good answers, I don't think it would go down too well if the legislator who happens to be a full-time dairy farmer and part-time legislator is asked to go to his typewriter and write a letter or handwrite a letter. I think that is a little contentious.

The proposed regulations required detailed documentation of funds spent on legislative administrative activities in both 1983 and 1984. 1983, of course, is well behind us. What if it is impossible for a grantee to meet those retroactively imposed procedural requirements? Will that be a basis for defunding?

Mr. DAUGHERTY. That is not a requirement of retroactive reporting. A number of our grantees have 1983 funds they are expending. Any future activities undertaken after the promulgation of the regulation would be subject to new documentation requirements.

DUES TO LOBBYING ORGANIZATIONS

Senator RUDMAN. The regulations, as I read them, prohibit the use of LSC funds to pay dues to any organization other than the bar association of which a substantial purpose is to take positions on matters pending before legislative or administrative bodies.

What does "substantial" mean? For instance, if the organization receiving the dues does all its position taking with non-LSC funds, such as the New Hampshire Welfare Council, very fine people concerned with the plight of poor people and other disvantaged people, a very good organization for New Hampshire Legal Services to belong to, I suspect they probably do get involved with our legislature, what do you do about that? Are you going to say their substantial purpose is to take positions, therefore, LSC can't pay——

Mr. DAUGHERTY. If they are substantial purposes.

Senator RUDMAN. I say they are, but they get a lot of funds from a lot of places and small amount of dues. Can you see that is a possible problem with your regulation? I think it is.

Mr. DAUGHERTY. Certainly a possible problem. We have had different problems, also, Senator, with the perception of Legal Services program are more involved in political activity——

Senator RUDMAN. I have had that problem also.

Mr. DAUGHERTY. Than they are, largely because of their affiliation with organizations that are substantially involved in the political process.

Perhaps there is something that can be done there to avoid the problem you see. But there are some national lobbying organizations that are largely dependent upon Legal Services' funds. We had a number of complaints about that.

PROBLEMS CREATED IN FIELD SERVICES

Senator RUDMAN. I understand that, and I don't disagree with that. Do you think you ought to go back and take a close look at that regulation because it might cause problems in some of your field services? These organizations are not thought of political in that way. The Social Welfare Council gave New Hampshire Legal Assistance a $5,000 grant last year. Should they quit the New Hampshire Welfare Council? Under your regulation, they ought to. That is not what the regulation was drawn for, but that is the result of all that.

My problem is you are looking at very legitimate problems out there which we all can agree are legitimate. Too much involvement of Legal Services' employees in things that have precious little to do, in my view, with the direct delivery of legal services to the poor.

On the other hand, there have been some very good organizations that were State-oriented that were working in a very cooperative way with State governments to help the plight of poor people.

I am going to have a number of questions for the record which you can answer. They state the problem as I have stated to you here. I will do those for the record. I want to ask you one other.

The fiscal 1984 appropriations bill, in connection with legislative lobbying, prohibits any grantee or employee thereof from "participation in a coordinated effort" to communicate with elected officials on an issue. The regulations, however, not only include that requirement, but they prohibit the employee from even "consulting with persons who are participating in a coordinated effort."

How is the employee supposed to know that the person is involved in a coordinated lobbying effort in some field that particular lawyer may well be expert on? Are you not limiting the source of the expertise of an attorney as to who that person can call on in order to best represent his or her client? Isn't that a possible problem?

Mr. DAUGHERTY. We are saying they may consult with attorneys as to a legal problem involved; they can consult with your staff as to the status of legislation. We felt to implement your language properly that we should limit their communication with those who are engaged in lobbying.

Senator RUDMAN. Assuming they know it.

Mr. DAUGHERTY. Assuming they know it. We would prohibit consultation with trade associations and lobbying organizations in order to ensure there is not participation in a coordinated effort——

Senator RUDMAN. Expand that for the record. I have a couple of problems on that. I have three or four other questions on your regulations I want you to just answer for the record.

LAWSUITS

The Corporation has been involved in a number of lawsuits. We discussed that. A dozen or so lawsuits?

Mr. BOGARD. I think it is more like five or six.

Senator RUDMAN. How much has it cost you in outside counsel so far?

Mr. SWENDIMAN. Approximately $50,000 to date.

Senator RUDMAN. Do you tend to use law firms in those areas across the country where the lawsuit is brought? Probably most are brought here in the District.

Mr. SWENDIMAN. Senator, you need to amplify, the lawsuits of which you refer are only a small part of it. The Corporation gets sued, in fact is the subject of what I perceive as a number of frivolous suits. For example, an employee of a program is terminated and that employee automatically sues the Corporation. We retain counsel in the particular area where that lawsuit is brought.

Senator RUDMAN. I am not really talking those kinds of cases.

Mr. SWENDIMAN. In terms of total litigation, we are involved in those and, frankly, we have gotten an increasing number of these during the past year, year and a half.

BUDGETING FOR OUTSIDE LEGAL SERVICES

Senator RUDMAN. What have you budgeted for outside legal services?

Mr. SWENDIMAN. Budgeted for litigation——

Senator RUDMAN. Litigation to defend Legal Services Corporation.

Mr. SWENDIMAN. We don't break that down, per se.

Senator RUDMAN. Do you have it in your administrative budget?

Mr. SWENDIMAN. We have a line item for litigation which includes outside counsel and lawsuits. That was budgeted at $250,000.

Senator RUDMAN. What would that pay for other than outside lawyers, experts?

Mr. SWENDIMAN. If an expert was needed.

Senator RUDMAN. Transcripts.

Mr. SWENDIMAN. Transcripts, normal costs of litigation.

Senator RUDMAN. Seventy, eighty percent would be for outside counsel.

Mr. SWENDIMAN. Yes, sir.

Senator RUDMAN. Do you use one particular law firm here in the District?

Mr. SWENDIMAN. No, sir.

Senator RUDMAN. You use several firms?

Mr. SWENDIMAN. Yes, sir.

INVESTIGATIONS OF PAST ABUSES

Senator RUDMAN. During the past 10 months, there have been oversight hearings by the Senate Committee on Labor and Human Resources into alleged past abuses in the use of funds by the Corporation and its grantees. They are useful and worthwhile hearings to get the record clear. GAO has been working on that, and the Corporation has cooperated with that committee.

Of the many questions regarding the use of the funds, how many involved the use of funds appropriated for fiscal years 1982, 1983, and 1984, since the committee adopted the various reform riders to prevent further abuses?

Mr. BOGARD. I haven't really looked at it like that. I think they are primarily 1982 and prior. Nothing that I know of for 1983 and 1984.

Senator RUDMAN. I will tell you, to my knowledge and my staff's knowledge, there are none.

Mr. BOGARD. I am not sure about 1983. There were some things in 1982.

Senator RUDMAN. We have adopted, after much contentious discussion here in the Senate, a series of riders that nobody liked, therefore, they must have been a good compromise, and since that time, none of the abuses that were discussed in that committee occurred during those years; am I correct?

Mr. DAUGHERTY. Most of the discussion in the committee, Senator, focused on records of the Corporation that the committee staff reviewed during the period of time during which the Corporation was actively encouraging the activities and was correspondent with many of those perpetrating the abuses.

Such abuses that may have occurred since then, we are not regularly informed of and information doesn't appear in our files as it did in the 1980–81 period.

Senator RUDMAN. Knowing that committee and its very excellent staff, if there were some abuses of a current nature, I suspect we would have heard about them. My recollection is none for 1983 and 1984.

Mr. STREETER. I am Jim Streeter from the Corporation.

Senator RUDMAN. Fine.

Mr. STREETER. The Labor Committee concentrated primarily on activities that had been encouraged by the Corporation in Washington. They did not discover any activity they considered improper which is currently being encouraged by the Corporation.

We do, however, receive complaints frequently from Members of Congress about problems with the program——

Senator RUDMAN. I am well aware of that. Thank you.

Your budget submission states, as a result of the hearings and related activity in November, Congress attached stringent new restrictions on lobbying and other activities by LSC and its grantees. My recollection is the fiscal year 1983 appropriation restricted administrative advocacy but permitted legislative advocacy in certain limited circumstances; is that not correct?

Mr. DAUGHERTY. Yes, sir.

CARRYOVER FUNDS

Senator RUDMAN. Let's talk about carryover balances. The Corporation's budget submission for fiscal year 1984 estimated that $3 million in unused fiscal year 1983 funds would be carried over, an increase of $819,000 from the prior year.

The budget submission for fiscal year 1985 states that the actual carryover was $5.7 million. The budget submission also indicates that over $5 million of these carried-over funds were in the budget areas controlled by the Corporation itself; that is, not in the budget categories funding the field programs or the support centers which consume over 90 percent of the request.

Finally, we are told that the entire $5 million will be spent during fiscal year 1984. Would you tell us exactly how this money is being used, and please be specific. If not now, you can amplify for the record.

Mr. BOGARD. We can do both, Senator. The large portion of that $5 million was in our area of program development which I mentioned earlier. It was an office that was established early in 1983 and was primarily to do the demonstration projects we now discussed—the Jacksonville-type private law clinics and law school clinics. Unfortunately, it took time to get that office established and staffed and then start the grant process, so the $3 million the Board set aside for the program called "New Direction for the Private Bar" simply didn't get expended. We didn't want to put grants out without laying the proper groundwork.

The office is now fully staffed. Grant packages are out and the money will be expended for grants this year and also for next year.

In addition, when I got to the Corporation in December 1982, there were about 45 vacancies for which funds had been set aside, but simply understaffed. That was primarily in the area of field services and in the area of the Corporation itself in Washington. We have tried to not fill the staff up. We have been trying to operate it as much on a barebones level as we can.

As a result, we have a lot of money for salaries and administration that simply wasn't expended and was carried forward. We hope to reprogram that into other areas as needed, as opposed to salaries. I can give you more for the record.

Senator RUDMAN. That is fine. The gentleman who is your acting General Counsel, how long have you been acting General Counsel?

Mr. SWENDIMAN. Since late January 1983.

REPROGRAMMING

Senator RUDMAN. Let me ask you this question. Why hasn't the Corporation notified the House and Senate Appropriations Committees of the proposed use of these funds in light of section 509 of the 1984 Act which is identical to prior-year language relating to reprogrammings? Are you familiar with section 509? Do you agree it applies to you or don't you think it applies to you? If you don't, why not?

Mr. BOGARD. I will defer to my lawyer.

Senator RUDMAN. That is the reprogramming section which does not allow for changes in the use of funds without our permission. I am not saying permission would be withheld; it probably would be granted. We get reprogramming requests all the time. We have not received a 509 notification.

Is that something that slipped through the cracks; can you tell us about it? Mr. White?

Mr. WHITE. I am not familiar with it.

Senator RUDMAN. With section 509?

Mr. WHITE. No, the report.

Mr. BOGARD. Mr. White has been in the Comptroller's Office since 1976, and we had carryovers, I am sure, each year. If we have not done that, it has been a historical omission, and we will certainly look into it.

Senator RUDMAN. It goes back to 1983, this precise language. Would you take a look at that, please? We are not accusing anybody of malfeasance, maybe a little negligence. 509—"None of the funds provided under this act shall be available for obligation or expenditures through a reprogramming of funds which creates new programs and eliminates a project activity, increases funds or personnel by any means," et cetera. This is section (b), and I think it specifically applies to what you are doing. It is on page 68 of the bill. This is the House bill. Please respond to that, if you will. I don't want to make a Federal case of this, Mr. Bogard.

Mr. BOGARD. If it is there, we will comply with it.

SUBMITTED QUESTIONS

Senator RUDMAN. We have a couple questions on the Board expenses. I will ask those for the record and a couple of other questions, on staff and some other items. I think we very importantly requested some of the things for the record. It would be very helpful to us if we can receive them fairly early. Can you get those in within 10 days?

Mr. BOGARD. We certainly will make every effort to have them.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

QUESTION 1: On what basis did the Corporation, in the regulations adopted Saturday [April 28, 1984], decide to limit the ability of grantees to respond to requests from elected officials by requiring that the requests be in writing and on a specific matter in connection with an identifiable legislative measure? Is the LSC seriously suggesting a regulation which would prohibit a constituent of mine who happens to work for an LSC grantee from responding to a question about the qualifications of a Board nominee or anything else I care to ask about if I called him on the phone during working hours?

Are you aware that those limitations were specifically considered during the Senate negotiations on the LSC appropriations rider last fall and rejected?

Would the content of their communication with the elected official have to be submitted to the LSC, or do you consider that privileged?

ANSWER: As we stated at the hearing, 45 C.F.R. § 1612.4(b)(1) and (4) of the LSC regulations adopted in March 1983 permit a legal services attorney to respond to such an oral request, but require that he subsequently obtain a written request from the official stating the type of representation or assistance requested and identifying the legislation to be addressed. We have searched the legislative history of Pub. L. 98-166 in vain for any statement indicating that any member of the Senate disagreed with that existing regulation. To date, your staff has not furnished us any evidence that the Senate considered and rejected this requirement.

We do not require the content of the communication to the elected official be furnished the Corporation in the ordinary course of business. Should a complaint arise that would require investigation by the Corporation, we would not regard the communication as privileged since the official is not eligible to be a client of the legal services program.

As you can see from the attached quarterly report from the Western Center on Law and Poverty, our grantees have not found officials reluctant to make written requests for the services of legal services attorneys.

Should we have occasion to revise these regulations in the future, we will consider comments from elected officials on the burden this may impose. We do not wish to impose burdensome requirements on elected officals. We do wish to provide a safeguard against self-generated legislative work by insuring that a legal services attorney who has taken time away from client services can demonstrate that work he is doing falls within virtually the sole exception to the flat prohibition on communications to influence legislation contained in Pub. L. 98-166.

Western Center on Law and Poverty, Inc.

April 27, 1984

Mr. John Hedges
Regional Director
Legal Services Corporation
177 Post Street, Suite 890
San Francisco, California 94108

Dear John:

Enclosed please find our Legislative and Administrative Quarterly Report for the first quarter of 1984.

As noted previously, there are two aspects of our report which I should bring to your attention. First, we cannot send copies of client retainer documents since these contain confidential information.

Second, all listed activities falling outside the ambit of the Continuing Resolution restrictions on the use of the 1983 and 1984 LSC grant funds were supported, in their entirety, with funds other than 1983 or 1984 LSC grant funds.

Sincerely,

Philip H. Henderson
Treasurer

Enclosure

cc: LSC, Office of Field Services
Monitoring and Evaluation Unit

LEGISLATIVE AND ADMINISTRATIVE
QUARTERLY REPORT

GRANT NUMBER: 805110

PROGRAM NAME: WESTERN CENTER ON LAW AND POVERTY

REPORTING PERIOD: JANUARY 1, 1984 TO MARCH 31, 1984

CONTACT PERSON: MARY BURDICK

I. LEGISLATIVE ACTIVITIES

1. Meeting with Dion Aroner, Assembly Human Services Committee
   - A. January 4, 1984
   - B. Client retainers dated 5/9/83 and 1/5/84
   - C. AB1630
2. Discussion with Senator Keene's aide
   - A. January 4, 1984
   - B. Client retainers dated 5/6/83, 5/20/83 and 7/21/83
   - C. AB814, AB1515
3. Discussion with Senator McCorquodale's staff
   - A. January 5, 1984
   - B. Client retainers dated 5/6/83, 5/20/83 and 7/21/83
   - C. SB1113, AB1515
4. Discussion with Assemblyman Vasconcellos
   - A. January 5, 1984
   - B. Client retainers dated 5/6/83 and 7/21/83
   - C. AB1515
5. Meeting with staff of Senator McCorquodale's office
   - A. January 5, 1984
   - B. Letter from Senator McCorquodale's office (see Attachment A)
   - C. Fraud prevention bill (became SB2018)
6. Meeting with State Senate Housing and Urban Affairs Committee Task Force
   - A. January 5, 1984
   - B. Letter from Senator L. Green (Attachment B)
   - C. Land Use and Planning (later SB 2107)
7. Meeting with staff of Assemblyman Chacon's office
   - A. January 6, 1984
   - B. Client retainer dated 11/14/83
   - C. Student WIN exemption (became AB2466)
8. Letter to L.A. County Supervisor Ed Edelman
   - A. January 6, 1984

B. Letter from Supervisor Edelman of January 13, 1984 (see Attachment C)
C. Job Training Partnership Act

9. Letter to members of State Senate Housing and Urban Affairs Committee Task Force
A. January 6, 1984
B. Attachment B above
C. SB2107

10. Meetings with staff of Senator's Roberti, Keene, and Bates and consultant to Senate Health and Welfare

A. January 9, 1984
B. Client retainer dated 1/2/84
C. SB144

11. Meetings with Assemblyman Konnyu, and staff of Assemblyman Chacon and consultant to Senate Health & Welfare Committee

A. January 9, 1984
B. Client retainers dated 5/9/83 and 1/5/84
C. AB1630

12. Discussions with Assemblyman Bates and staff

A. January 10, 1984
B. Client retainers dated 5/9/83 and 1/5/84
C. AB1630

13. Discussion with Senate Office of Research staff

A. January 10, 1984
B. Letter from Senator Roberti dated 1/6/84 (see Attachment D)
C. Consumer issues

14. Meeting with staff of Assemblyman Chacon and Assemblyman Bates

A. January 11, 1984
B. Client retainer dated 11/14/83
C. Student WIN bill

15. Meeting with staff Asembly Human Services Committee

A. January 11, 1984
B. Client retainer dated 11/14/83
C. SB144

16. Meeting with Senator Diane Watson

A. January 11, 1984
B. Client retainer dated 11/14/83
C. SB144

17. Discussion with Assemblywoman Waters and staff

A. January 11, 1984
B. Client retainer dated 5/6/83
C. AB1515

18. Discussion with staff of State Senate Housing and Urban Affairs Committee

A. January 17, 1984
B. Client retainer dated 5/6/83
C. SB1113

19. Discussion with Senator McCorquodale's staff
    - A. January 17, 1984
    - B. Client retainer dated 5/6/83
    - C. SB1113

20. Meetings with staff of Senator Motoya, Senator Rosenthal, Senator Mello, and Senator Watson
    - A. January 17, 1984
    - B. Client retainer dated 5/5/83
    - C. SB347

21. Meeting with staff of Senator Petris, and Senator Stiern
    - A. January 17, 1984
    - B. Client retainer dated 1/2/84
    - C. SB144

22. Meeting with Senator McCorquodale's staff
    - A. January 18, 1984
    - B. Client retainer dated 5/5/83
    - C. SB347

23. Testify before Senate Health & Welfare Committee
    - A. January 18, 1984
    - B. Client retainer dated 5/5/83
    - C. SB347

24. Meetings with aides in offices of Assemblypersons Waters, Agnos, Vasconcellos, Alatorre, Roos, and Bates
    - A. January 23, 1984
    - B. Client retainers dated 5/9/83 and 1/5/84
    - C. AB1630

25. Wrote letter to Assembly Ways & Means Committee
    - A. January 23, 1984
    - B. Client retainers dated 5/9/83 and 1/5/84
    - C. AB1630

26. Discussion with Senator McCorquodale
    - A. January 23, 1984
    - B. Client retainer dated 5/6/83
    - C. SB1113

27. Discussion with Assemblyman Gray Davis' staff
    - A. Janaury 25, 1984
    - B. Client retainer dated 5/6/83
    - C. AB1888

28. Discussion with Assemblywoman Molina
    - A. January 24, 1984
    - B. Letter from Assemblywoman Molina dated March 4, 1983 (see Attachment E)
    - C. AB1683, AB1684

29. Discussion with Assemblyman Bronzan
    - A. January 25, 1984
    - B. Client retainer dated 5/6/83
    - C. AB1515

30. Discussion with staff of State Senate Housing and Urban Affairs Committee Task Force
    - A. February 2, 1984
    - B. Attachment B
    - C. SB 2107

31. Meeting with Assemblyman Klehs
    - A. February 6, 1984
    - B. Client retainer dated 2/3/84
    - C. Supplementation bill (became SB2275)

32. Meeting with Assemblyman Agnos' staff
    - A. February 6, 1984
    - B. Client retainer dated 2/3/84
    - C. Supplementation bill (became SB2275)

33. Discussion with Assemblywoman Molina
    - A. February 7, 1984
    - B. Letter from Assemblywoman Molina dated 3/4/83 (see Attachment E)
    - C. AB1682, AB1684

34. Meeting with Assemblyman Connelly's staff
    - A. February 9, 1984
    - B. Client retainer dated 2/3/84
    - C. Supplementation bill (became SB2275)

35. Discussions with aides in offices of Senator B. Greene and Senator Chacon
    - A. February 10, 1984
    - B. Client retainer dated 2/3/84
    - C. Supplementation bill (became SB2275)

36. Meeting with Congressman Hawkins staff
    - A. February 13, 1984
    - B. Letter from Congressman Hawking dated Janaury 25, 1984
    - C. Job Training Partnership Act (JTPA) (Attachment F)

37. Discussion with Assemblyman Chacon's staff
    - A. February 13, 1984
    - B. Client retainer dated 11/14/83
    - C. AB2466

38. Meeting with Assemblywoman Watson's staff
    - A. February 13, 1984
    - B. Client retainer dated 11/14/83
    - C. Workfare alternative (became SB1532)

39. Meeting with Assemblyman Hayden's staff

    A. February 13, 1984
    B. Client retainer dated 2/3/84
    C. Supplementation

40. Meeting with Assemblyman Chacon

    A. February 14, 1984
    B. Client retainer dated 2/3/84
    C. Supplementation

41. Meeting with Assemblywoman Watson's staff

    A. February 16, 1984
    B. Client retainer dated 2/3/84
    C. Supplementation

42. Meeting with Assemblywoman Waters' staff

    A. February 16, 1984
    B. Client retainer dated 11/14/83
    C. Cost of Living Adjustment

43. Meeting with Assemblyman Chacon's staff

    A. February 21, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

44. Telephone discussion with staff of Assembly Human Services Committee

    A. February 21, 1984
    B. Client retainer dated 2/10/84
    C. AB2508

45. Discussion with Senator Petris' staff

    A. February 23, 1984
    B. Letter from Senator Petris dated February 23, 1984 (see Attachment G)
    C. SB1442

46. Meeting with Assemblyman Chacon's staff

    A. February 27, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

47. Meeting with Senator McCorquodale's staff

    A. February 28, 1984
    B. Client retainer dated 1/21/84; letter from Senator McCorquodale dated December 23, 1983 (see Attachment A)
    C. SB2018

48. Meeting with Assemblyman Bates and his staff, and with staff of the Senate Health and Welfare Committee

    A. February 28, 1984
    B. Client retainer dated 1/2/84
    C. Workfare

49. Discussion with Assemblyman Agnos' staff

    A. February 28, 1984
    B. Oral request from Assemblyman Agnos, confirming letter to follow

    C. AB1527

50. Meeting with Assemblyman Chacon's staff

    A. March 1, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

51. Meeting with Senator Watson's staff

    A. March 2, 1984
    B. Client retainer dated 2/3/84
    C. SB2275

52. Meeting with Assemblyman Bates' staff

    A. March 2, 1984
    B. Client retainer dated 11/14/83
    C. SB1378

53. Discussion with Assemblyman Bronzan

    A. March 5, 1984
    B. Client retainer dated 5/6/83
    C. AB1515

54. Meeting with Senator McCorqudale's staff

    A. March 6, 1984
    B. Client retainer dated 1/21/84; letter from Senator McCorquodale dated December 23, 1983 (see Attachment A)
    C. SB2018

55. Meeting with Assemblywoman Waters' staff

    A. March 6, 1984
    B. Letters from Assemblywoman Waters dated March 2, 1984 (see Attachment H and March 22, 1984 (see Attachment I)
    C. AB3281, AB3282, AB3283

56. Meeting with Senator Rosenthal's staff

    A. March 6, 1984
    B. Client retainer dated 12/17/83
    C. SB1579

57. Discussion with staff State Senate Housing and Urban Affairs Committee Task Force

    A. March 7, 1984
    B. Attachment B
    C. SB 2107

58. Meeting with Assemblyman Chacon's staff

    A. March 8, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

59. Discussion with Assemblywoman Molina
    A. March 12, 1984
    B. Letter from Assemblywoman Molina dated March 12, 1984 (see Attachment J)
    C. AB3669, AB1407

60. Meeting with Assemblyman Bates'
    A. March 13, 1984
    B. Letter from Assemblyman Bates dated March 9, 1984 (see Attachment K)
    C. AB2946

61. Discussion with staff State Senate Housing and Urban Affairs Committee Task Force
    A. March 13, 1984
    B. Attachment B
    C. SB2107

62. Meeting with Senator McCorquodale's staff
    A. March 15, 1984
    B. Client retainer dated 1/21/84; letter from Senator McCorquodale dated December 23, 1983 (see Attachment A)
    C. SB2018

63. Meeting with Assemblyman Bates' staff
    A. March 15, 1984
    B. Client retainer dated 3/9/84
    C. AB3281, AB3283

64. Wrote letter to Assembly Human Services Committee
    A. March 15, 1984
    B. Client retainer dated 3/9/84
    C. AB3281

65. Meeting with Assemblyman Chacon's staff
    A. March 15, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

66. Meeting with Assemblyman Connelly
    A. March 15, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

67. Meeting with Assemblyman Connelly
    A. March 19, 1984
    B. Client retainer dated 3/9/84
    C. AB 3281

68. Testify before Assembly Human Services Committee
    A. March 20, 1984
    B. Client retainer dated 1/21/84; letter from Senator McCorquodale dated December 23, 1983 (see Attachment A)
    C. SB2018

69. Meeting with Senator McCorquodale's staff

    A. March 22, 1984
    B. Client retainer dated 1/21/84; letter from Senator McCorquodale dated December 23, 1983 (see Attachment A)
    C. SB2018

70. Meeting with Senator Watson's staff

    A. March 22, 1984
    B. Client retainer dated 2/3/84
    C. SB2275

71. Meeting with Assemblyman Chacon's staff

    A. March 22, 1984
    B. Client retainer dated 11/14/83
    C. AB2466

72. Discussion with Assemblyman Connelly's staff

    A. March 22, 1984
    B. Letter from Assemblyman Connelly dated March 16, 1984 (see Attachment L)
    C. AB2878

73. Wrote letter to Senate Finance

    A. March 23, 1984
    B. Letter from Senator Petris dated February 23, 1984 (see Attachment G; client retainer dated March 21, 1984)
    C. SB1442

74. Discussion with Assemblyman Vasconcellos' staff

    A. March 26, 1984
    B. Client retainer dated 5/6/83
    C. AB1888

75. Presentation at Ways and Means Subcommittee #1

    A. March 26, 1984
    B. Client retainer dated 5/6/83
    C. AB1888

76. Meeting with Senator Watson's staff

    A. March 27, 1984
    B. Client retainer dated 2/3/84 (2275); letter from Senator Watson dated March 27, 1984 (2002) (see Attachment M)
    C. SB2002, SB2275

77. Meeting with Assemblyman Bates' staff

    A. March 27, 1984
    B. Client retainer dated 3/9/84

    C. AB3282

78. Wrote letter in opposition to SB2002 to Health and Human Services Committee

    A. March 29, 1984
    B. Letter from Senator Watson, Committee Chair Person, dated March 27, 1984 (see Attachment M)
    C. SB2002

79. Meeting with Assemblywoman Waters' staff and staff of Department of Social Services

    A. March 29, 1984
    B. Client retainers dated 5/9/83 and 1/5/84
    C. AB1630, SB1579

80. Meeting with Assemblywoman Waters' staff

    A. March 30, 1984
    B. Letter from Assemblywoman Waters dated March 22, 1984 (see Attachment I); client retainer dated 3/9/84
    C. AB3282, AB3283

81. Meeting with Senator Watson's staff

    A. March 30, 1984
    B. Client retainers dated 2/3/84 (2275) and 12/17/83 (1579)
    C. SB2275, SB1579

II. ADMINISTRATIVE ACTIVITIES

1. Discussion with Department of Health Services staff

    A. January 17, 1984
    B. Client retainer dated 5/6/83
    C. SB1113

2. Discussion with Department of Health Services staff

    A. January 18, 1984
    B. Client retainer dated 5/6/83
    C. SB1113

3. Discussion with Department of Health Services staff

    A. January 20, 1984
    B. Client retainers dated 5/6/83 and 7/21/83
    C. AB1515, SB1113, AB814

4. Discussion with members of the Medical Assistance Commission

    A. February 21, 1984
    B. Client retainer dated 5/6/83
    C. AB1515

5. Discussion with Department of Health Services staff

    A. March 14, 1984
    B. Client retainer dated 5/9/83
    C. AB1515, SB667

ATTACHMENT A

Senate
California Legislature

DAN McCORQUODALE
SENATOR
TWELFTH DISTRICT

December 23, 1983

Western Center on Land
  and Poverty, Inc.
1900 K Street, Suite 200
Sacramento, CA 95814

Dear Friends:

I would like to request the assistance of Mr. Casey S. McKeever, an attorney on your staff, in the preparation of prospective State legislation dealing with the prevention of welfare fraud. Mr. McKeever's expertise would prove most helpful.

Cordially,

Dan McCorquodale

Dan McCorquodale
Senator, 12th District

DM/ch

ATTACHMENT B

California Legislature

Senate Committee
on
Housing and Urban Affairs

LEROY F. GREENE
CHAIRMAN

STATE CAPITOL, ROOM 2205
SACRAMENTO, CALIFORNIA 95814
(916) 445-8740

September 12, 1983

Mr. Jonathan Lehrer-Graiwer
Western Center on Law & Poverty
3535 W. Sixth Street, 2nd Floor
Los Angeles, CA 90020

Dear Mr. Lehrer-Graiwer:

As part of this year's Senate Housing Package, the Senate has created a Housing Advisory Task Force made up of representatives of the building industry, labor, financial institutions, housing advocates, local government and other interested groups. Its purpose is to provide the Senate with concrete legislative proposals on housing issues to be considered by the Legislature next year. We have no interest in useless reports; we seek specific proposals.

We would like you to join the Task Force because of your expertise in this area. Your participation would be invaluable in forwarding our goals.

The Task Force had its initial meeting in Los Angeles on August 4. Because of the size of the Task Force, we have divided into 6 panels to conduct our work. Enclosed you will find a transcript of our first meeting, a list of the membership, a list of the panels and a schedule of panel meeting dates.

Please send me a response to our invitation, indicating whether you wish to join us in this effort and, if so, on which panel you wish to serve.

Sincerely,

Leroy F. Greene

LEROY F. GREENE

LFG/cl

Enclosure

Western Center on Law and Poverty, Inc.

September 19, 1983

Senator Leroy S. Greene, Chairman
Senate Committee on Housing and
Urban Affairs
State Capitol, Room 2205
Sacramento, CA 95814

Dear Senator Greene:

I am delighted to accept your invitation to join the Senate Housing Advisory Task Force and I look forward to working with members of the Task Force in developing concrete legislative proposals for housing development.

In the recent past I have been working on land use and planning issues, particularly State requirements for the local provision of affordable housing, and consequently I believe that my expertise would be most useful in serving on the Land Use and Planning Committee. From the materials you sent me, that Committee will be meeting on September 20, 1983, and I expect to attend its meeting.

Again, let me thank you for this opportunity to assist the Housing Advisory Task Force in developing housing legislation which will, hopefully, assist in the development of more low, moderate and market-rate housing.

Sincerely,

Jonathan Lehrer-Graiwer

JONATHAN LEHRER-GRAIWER
Attorney at Law

JLG:mlh

SCHEDULE OF PANEL MEETINGS

SENATE HOUSING ADVISORY TASK FORCE

PANEL	DATE AND TIME	LOCATION
Manufactured Housing	September 13, 1983 10:00 am to 4:00 pm	Sacramento Metropolitan Airport--Host Hotel Room 104
Capital Improvement	September 14, 1983 10 am to 4 pm	Sacramento Metropolitan Airport--Host Hotel Garden Room
Land Use and Planning	September 20, 1983 9:30 am	State Building Los Angele 107 So. Broadway, Room 10
Rental Construction and Housing Rehabilitation	September 22, 1983 10:00 am	San Francisco Airport VIP Room, North Terminal Mezzanine
Housing Finance	October 12, 1983 10 am to 3 pm Briefing by the DHCD and CHFA	State Capitol Building Room 3191 Sacramento
Federal Issues	October 18, 1983 9 am to 1 pm	San Francisco Airport Trans World Lounge located behind the TWA ticket counter

California Legislature

Senate Committee
on
Housing and Urban Affairs

LEROY F. GREENE
CHAIRMAN

STATE CAPITOL, ROOM 2205
SACRAMENTO, CALIFORNIA 95814
(916) 445-8740

February 9, 1984

Mr. Jonathan Lehrer-Graiwer
Western Center on Law and Poverty
3535 West 6th Street
Los Angeles, CA 90020

Dear Mr. Lehrer-Graiwer:

Thank you for participating on the Senate's Housing Advisory Task Force. Your ideas and hard work have paid off in thirty recommendations for legislation in the areas of land use and planning, housing finance, rental housing and rehabilitation, manufactured housing, and federal issues.

The enclosed report of the Senate Housing Advisory Task Force includes the legislation developed by each task force panel. In the coming days, members of the Senate Committee on Housing and Urban Affairs and I will be introducing many of your proposals for legislative action.

Although we have completed formal task force meetings, I hope that I may continue to call on your expertise to assist me as housing legislation progresses through the Legislature and as new housing-related issues develop.

Again, thank you for contributing to the success of the Senate's Housing Advisory Task Force.

Sincerely yours,

Leroy F. Greene
LEROY F. GREENE

Enclosure

California Legislature

Senate Committee
on
Housing and Urban Affairs

LEROY F. GREENE
CHAIRMAN

STATE CAPITOL, ROOM 2205
SACRAMENTO, CALIFORNIA 95814
(916) 445-8740

March 13, 1984

Mr. Jonathan Lehrer-Graiwer
Western Center on Law and Poverty
3535 West 6th Street
Los Angeles, CA 90020

Dear Mr. Lehrer-Graiwer:

Enclosed for your information is a listing of bills that were introduced as a result of the recommendations of our various panels. Also shown is the committee to which each bill was assigned and date of hearing for those bills that have been set in committee.

As these measures are heard in committee, our staff may periodically call upon you for assistance and advise.

Copies of the measures of interest to you can be obtained by writing the Bill Room, State Capitol, Sacramento, CA 95814.

Sincerely,

Leroy F. Greene

LEROY F. GREENE

LFG/cl

Enclosure

California Legislature

Senate Committee
on
Housing and Urban Affairs

LEROY F. GREENE
CHAIRMAN

STATE CAPITOL, ROOM 2205
SACRAMENTO, CALIFORNIA 95814
(916) 445-8740

March 22, 1984

Mr. Jonathan Lehrer-Graiwer
Western Center on Law and Poverty
3535 West 6th Street
Los Angeles, CA 90020

Dear Jonathan:

Please find enclosed the proposed amendments to SB 2107 (Marks). They represent my best efforts to consolidate the views expressed at our meeting on Wednesday, March 7, 1984 and develop the compromise necessary to forestall official opposition of the League of California Cities and County Supervisors Association of California.

I'm sorry for the delay in sending this to you. It's the time of year when everything must be done at once.

Sincerely,

Krist

KRIST A. LANE

KAL/cl

Enclosure

LEGISLATION RECOMMENDED BY THE SENATE HOUSING ADVISORY TASK FORCE

Recommendations of the Panel on Land Use and Planning

SB 2107 (Marks)	Require that the distribution of regional housing needs and the local housing element promote the balance of jobs and housing in reasonable proximity to one another and that revised local housing elements contain incentives for the construction of low and moderate income housing. Senate Committee on Housing and Urban Affairs
SB 2136 (L. Greene)	Permit the payment of housing related fees under protest when litigation is initiated contesting the fee. Senate Committee on Housing and Urban Affairs
SB 2137 (L. Greene)	Specify that park and recreation dedications are based on unimproved land. Senate Committee on Housing and Urban Affairs
SB 2138 (L. Greene)	Request the Department of Housing and Community Development to conduct a study determining the effectiveness of and the degree of compliance with specified land use and planning laws. Senate Committee on Housing and Urban Affairs

Recommendations of the Panel on Rental Construction and Housing Rehabilitation

SB 1885 (Ellis)	Prohibit the imposition of a building fee increase once a tentative map application is complete and prohibit a building fee increase without 60 days published notice. Senate Committee on Housing and Urban Affairs
SB 2109 (Marks)	Clarify that the welfare property tax exemption also applies to housing developments for the elderly and handicapped which are financed from other than federal funds. Senate Committee on Rev. & Tax.
SB 2126 (L. Greene)	Appropriate $120 million for existing successful housing programs which leverage substantial private and public funds and for several new housing programs recommended by the panel. Senate Committee on Housing and Urban Affairs
SB 2312 (Petris)	Establish the California Housing Partnership to stimulate private investment in the preservation of housing for low income families. Senate Committee on Housing and Urban Affairs

SB 2313 (Petris)	Provide technical assistance to nonprofit housing corporations and local governments to preserve housing for low income families through development loans and resource centers. Establish a demonstration program to develop an early warning system to assist nonprofit housing corporations purchase existing low income housing projects which are about to convert to market rate. Require the right of first refusal for nonprofit housing corporations on projects which are about to convert to market rate. Senate Committee on Housing and Urban Affairs
SB 2318 (Royce)	Exclude from the imposition of SB 201 fees housing developments for which law or regulation preclude occupancy by children and those ancillary portions of housing developments which are not residences. Senate Committee on Local Government

Recommendations of the Panel on Housing Finance

SB 2108 (Marks)	Expand the existing CHFA mortgage insurance program include multifamily, rental housing financed by local housing agencies. Senate Committee on Housing and Urban Affairs
SB 2126 (L. Greene)	Appropriate $120 million for existing successful housing programs which leverage substantial private and public funds and for several new housing programs recommended by the panel. Senate Committee on Housing and Urban Affairs
SB 2312 (Petris)	Establish the California Housing Partnership to stimulate private investment in the preservation of housing for low income families. Senate Committee on Housing and Urban Affairs
SB 2313 (Petris)	Provide technical assistance to nonprofit housing corporations and local governments to preserve housing for low income families through development loans and resource centers. Establish a demonstration program to develop an early warning system to assist nonprofit housing corporations purchase existing low income housing projects which are about to convert to market rate. Require the right of first refusal for nonprofit housing corporations on projects which are about to convert to market rate. Senate Committee on Housing and Urban Affairs
SB 2318 (Royce)	Exclude from the imposition of SB 201 fees housing developments for which law or regulation preclude occupancy by children and those ancillary portions of housing developments which are not residences. Senate Committee on Local Government

Recommendations of the Panel on Housing Finance

SB 2108 (Marks)	Expand the existing CHFA mortgage insurance program include multifamily, rental housing financed by local housing agencies. Senate Committee on Housing and Urban Affairs
SB 2161 (Marks)	Authorize a second unit financing program administered by CHFA funded with multifamily, rental housing, mortgage revenue bond proceeds or other monies available to CHFA from loan repayments. Senate Committee on Housing and Urban Affairs

Recommendations of the Panel on Manufactured Housing

SB 1802 (L. Greene)	Require that the Department of Housing and Community Development conduct a study on the implementation of SB 484 (1981) and SB 1960 (1980) relating to zoning for mobilehomes to determine whether local governments have complied with the intent of these laws. Senate Committee on Housing and Urban Affairs
SB 1849 (Royce)	Authorize Cal-Vet loan limit adjustments for mobilehomes in areas of the state experiencing significantly higher costs for mobilehomes, land, and related expenses. Senate Committee on Local Government
SB 1927 (Craven)	Encourage that representation of manufactured housing on general plan advisory committee be balanced. Senate Committee on Housing and Urban Affairs Set for hearing March 20, 1984
SCR 61 (Craven)	Encourage the Department of Housing and Community Development to develop incentive for the construction of more family mobilehome parks in California. Senate Committee on Housing and Urban Affairs

ATTACHMENT C

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
821 HALL OF ADMINISTRATION · LOS ANGELES CALIFORNIA 90012

January 13, 1984

Carmen A. Estrada, Esq.
Western Center on Law and Poverty, Inc.
3535 West 6th Street
Los Angeles, California 90020-2898

Dear Ms. Estrada:

Thank you for writing and outlining your ideas on the structure of Los Angeles County's Job Training Partnership Act (JTPA) program. I plan to include some of the points you have mentioned.

Thank you again for writing and sharing your ideas with me. You should be hearing from my Deputy, Mr. Jim Moreno, regarding the proposed changes in the JTPA program that I will be presenting to the Board of Supervisors.

Very truly yours,

EDMUND D. EDELMAN
Supervisor
Third District

EDE:cjmf

ATTACHMENT D

STATE OF CALIFORNIA
SENATE
SACRAMENTO, CALIFORNIA 95814

January 6, 1984

Mr. Rudolfo C. Aros
Western Center on Law
& Poverty, Inc.
1900 K Street, Suite 200
Sacramento, Ca. 95814

Dear Mr. Aros:

I have asked staff of the Senate Office of Research to develop ideas for possible legislation in the area of consumer issues.

They will be setting up meetings to discuss those issues and I would appreciate it if you could share your ideas with them.

Sincerely,

DAVID ROBERTI

DR: EK:lm

ATTACHMENT E

California Legislature

GLORIA MOLINA
ASSEMBLYWOMAN, FIFTY-SIXTH DISTRICT

March 4, 1983

Mr. Rudy Aros
Directing Attorney
Western Center on Law
 and Poverty
1900 K Street
Suite 200
Sacramento, CA 95814

Dear Rudy:

I have introduced legislation in the form of Assembly Bills 1682, 1683 and 1684 to address concerns stemming from persons filing claims with the Labor Commissioner.

I would appreciate your assistance in developing this legislative package. Your consideration of my request in appreciated.

Sincerely,

Gloria Molina

GLORIA MOLINA

GM/bd

cc: bill files

ATTACHMENT F

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
B-346A RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

January 25, 1984

Ms. Carmen A. Estrada, Esq.
Western Center on Law & Poverty, Inc.
3535 West Sixth Street
Los Angeles, California 90020

Dear Ms. Estrada:

On Tuesday, February 14, 1984, the Subcommittee on Employment Opportunities will conduct a hearing in Los Angeles on the implementation of the federal Job Training Partnership Act. This hearing is the first Congressional oversight hearing on local job training programs since JTPA became effective on October 1, 1983. Among other issues, the Subcommittee hearing will address the Los Angeles County plan for targeting training assistance to recipients of the General Relief program.

The hearing will be held in Room 1122 of the California State Office Building, 107 South Broadway, Los Angeles, and will begin at 9:30 a.m. and conclude at approximately 1:30 p.m.

It would be helpful to the Subcommittee's review of the Los Angeles County JTPA program if you would present testimony on the Western Center on Law and Poverty's complaint against the Los Angeles County Service Delivery Area filed with the California Employment Development Department.

In order to accommodate a number of witnesses and to provide an opportunity for questioning, please limit your oral presentation to 10 minutes. Your full prepared statement will be made available to the Subcommittee Members and entered into the official record of the hearing, along with any other supporting documents that you may wish to submit. It would be helpful if you could bring 35 copies of your prepared statement to the hearing for distribution to the Members, press and the general public.

If you have any questions regarding the hearing or are unable to testify on that date, please contact Susan McGuire of the Subcommittee on Employment Opportunities at (202) 225-1927.

The other Members of the Subcommittee and I look forward to hearing your testimony on February 14.

Sincerely,

Augustus F. Hawkins

Augustus F. Hawkins
Chairman

AFH:smb

ATTACHMENT G

NICHOLAS C. PETRIS
NINTH SENATORIAL DISTRICT
ALAMEDA AND CONTRA COSTA COUNTIES

CALIFORNIA LEGISLATURE

Senate

February 23, 1984

Mr. Casey McKeever
Western Center on Law and Poverty
1900 K Street, Suite 200
Sacramento, CA 95814

Dear Mr. McKeever:

Last year when passage of the budget bill was delayed, AFDC and SSI/SSP recipients failed to receive their life sustaining funds. To avoid similar disasters in the future, I have introduced SB 1442 which would guarantee the flow-through of these funds.

SB 1442 is scheduled for its first hearing in the Senate Committee on Health and Welfare on Wednesday, February 29th at 1:30 p.m. Any support the Western Center on Law and Poverty could offer SB 1442 would be deeply appreciated.

Enclosed for your information, is a copy of the bill.

Sincerely,

Nicholas C. Petris
NICHOLAS C. PETRIS

NCP:shb
Enclosure

ATTACHMENT H

Assembly
California Legislature

MAXINE WATERS
ASSEMBLYWOMAN, FORTY-EIGHTH DISTRICT
MAJORITY WHIP

March 2, 1984

Casey S. McKeever
Staff Attorney
Western Center on
Law & Poverty
1900 K Street, Ste. 200
Sacramento, CA 95814

Dear Mr. McKeever:

I am very interested in the issue of the beginning date of aid for AFDC recipients which, as you know, is being changed by the administration to result in lowered payments by delaying the time from which eligibility is established. I would greatly value the assistance of Western Center on Law & Poverty in providing information and opinions on this question, especially as to merits of AB 2470 (McAlister) and the desirability of changing current law to provide for aid to begin from the date of application. I also request that you provide this information and analysis to other members of the Assembly who are, or will be, facing this question.

I have found the expertise and assistance of Western Center on welfare issues valuable in the past and hope you will be able to accommodate my request on this matter.

Sincerely,

Maxine Waters

MAXINE WATERS
ASSEMBLYWOMAN 48th District

MW:SDiO:rkc

ATTACHMENT I

Assembly
California Legislature

MAXINE WATERS
ASSEMBLYWOMAN, FORTY-EIGHTH DISTRICT
MAJORITY WHIP

March 22, 1984

Casey S. McKeever, Esq.
Staff Attorney
Western Center on
Law & Poverty
1900 K Street, Suite 200
Sacramento, CA 95814

Dear Mr. McKeever:

I am interested in a variety of welfare issues, including beginning date of aid, eligibility verification problems and assistance to general relief applicants seeking benefits from the Social Security Administration.

I appreciate the assistance of Western Center on Law & Poverty in providing information and opinions on these questions, especially as to merits of AB 3281, AB 3282 and AB 3283. I also request that you provide this information and analysis to other members of the Assembly who are, or will be, facing this question.

I have found the expertise and assistance of Western Center on welfare issues valuable in the past and hope you will be able to accommodate my request on this matter.

Sincerely,

Maxine Waters

MW:SDiO:rkc

MAXINE WATERS
ASSEMBLYWOMAN 48th District

ATTACHMENT J

Assembly
California Legislature

GLORIA MOLINA
ASSEMBLYWOMAN, FIFTY-SIXTH DISTRICT

March 12, 1984

Mr. Rudy Aros
Directing Attorney
Western Center on Law & Poverty
1900 "K" Street, Suite 200
Sacramento, California 95814

Dear Mr. Aros:

I am requesting your assistance on AB 3669 (Molina), relating to usury and AB 1407 (Molina), relating to Immigration Consultants.

Sincerely,

Gloria Molina

GLORIA MOLINA

GM/i

ATTACHMENT K

Assembly
California Legislature

THOMAS H. BATES
MEMBER OF THE ASSEMBLY
TWELFTH DISTRICT
CHAIR
STANDING COMMITTEE ON
HUMAN SERVICES

March 9, 1984

Casey S. McKeever
Western Center on Law and Poverty
1900 K Street, Suite 200
Sacramento, CA 95814

Dear Mr. McKeever:

The Assembly Human Services Committee is currently considering AB 2946, a bill which will require the State Disability Evaluation service to follow relevant federal law. Since your office has expertise in welfare law and in the past has provided valuable information to the Committee regarding these issues, I am interested in your view of how AB 2946 will affect low income persons in California. As Chair of the Committee, I would like you to make such information available to me and my staff at a meeting to be held in my office on March 13, 1984.

I hope you will be able to attend.

Thank you for whatever assistance you can provide.

Sincerely,

Tom Bates

THOMAS H. BATES

THB:jtb

ATTACHMENT L

Assembly
California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

March 16, 1984

Rudy Aros
Western Center on Law and Poverty
1900 K Street
Sacramento, California 95814

Re: AB 2878 -- Deficiency Judgments

Dear Rudy:

Enclosed for your information is a copy of AB 2878 relating to deficiency judgments involving automobile sales contracts. As you know, the likelihood of deficiency judgments is increased due to the current practice of selling repossessed vehicles substantially below their "blue-book" value. The purpose of this bill is to minimize the adverse impact of these actions by requiring the advertising of such vehicles prior to the initiation of a deficiency judgment, resulting in the vehicles being sold in a more commercially reasonable manner.

I am requesting help in drafting language for proposed amendments which would assist in the passage of AB 2878. This bill is designed to deal with a serious problem faced by many low income consumers whose interests Western Center on Law and Poverty represents. Please contact Dan Pone in my office after you have had a chance to review the bill.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:dpt Enclosure

ATTACHMENT M

California Legislature
Senate Committee
on
Health and Human Services

March 27, 1984

Casey S. McKeever
Western Center on Law and Poverty
1900 K Street, Suite 200
Sacramento, CA 95814

RE: Senate Bill 2002

Dear Mr. McKeever:

The Senate Health and Human Services Committee is considering SB 2002, a bill which will restrict eligibility for state-only AFDC programs.

Since your office has expertise in welfare law and in the past has provided valuable information to the Committee regarding these issues, I am interested in your view of how SB 2002 will affect low income persons in California. As Chair of the Committee, I would like you to make such information available to the entire Committee and to appear and testify at the hearing regarding the bill, which is currently scheduled for Wednesday, March 28, 1984, at 1:30 p.m., in Room 4203. I hope you will be able to express your position on this matter.

Thank you for whatever assistance you can provide.

Sincerely,

Diane E. Watson
DIANE E. WATSON
Chairperson

DEW:gil

Assembly
California Legislature

ART AGNOS
ASSEMBLYMAN, SIXTEENTH DISTRICT

CHAIRMAN
JOINT LEGISLATIVE AUDIT COMMITTEE

May 9, 1984

Mr. Rudy Aros
Directing Attorney
Western Center on
  Law and Poverty
1900 K Street
Sacramento, California 95814

Dear ~~Mr. Aros~~ Rudy,

I am writing to confirm that an oral request was made by my office to meet with you and a member of my staff on February 28, 1984, regarding my bill, AB 1527.

This measure has been extensively amended and I anticipate that it will be heard in the Senate Judiciary Committee in mid-May. I am enclosing a copy of the latest amended version for your review.

Hopefully, I can continue to call on your office for assistance.

Sincerely,

Art

ART AGNOS

AA:dys

Enclosure

Western Center on Law and Poverty, Inc.

May 25, 1984

John Hedges
Legal Services Corporation
177 Post Street, Suite 890
San Francisco, California 94108

Dear Mr. Hedges:

Enclosed is a copy of a letter from Assemblyman Agnos, authorizing our staff to consult with the Assemblyman on AB 1527. This is the confirming letter referred to in our first quarter Legislative and Administrative Advocacy Report for 1984 item number 49.

Sincerely,

Philip H. Henderson
Treasurer

PHH:jma

cc:✓ LSC, Office of Field Services
Monitoring and Evaluation Unit
733 Fifteenth Street, N. W.
Washington, D. C. 20005

QUESTION 2: The regulations prohibit the use of LSC funds to pay dues to any organization, other than a bar association, of which a "substantial" purpose is to take positions on matters pending before legislative or administrative bodies. What does "substantial" mean? What if the organization receiving the dues does all its position-taking with non-LSC funds?

ANSWER: The regulation, 45 C.F.R. § 1612.5(c)(2), prohibits the use of Corporation funds to "pay dues to any organization (other than a bar association), a substantial purpose or function of which is to take positions on matters pending before legislative or administrative bodies." Within the context of this regulation, the use of "substantial" indicates that the prohibition does not apply to the paying of dues to an organization that occasionally takes positions on matters pending before legislative or administrative bodies as a minor purpose of the organization, but that it applies to more organizations than those which are formed solely for the purpose of lobbying. "Substantial" in this context indicates that a major function of the organization is lobbying (for example, more than 50 percent of the organization's time or resources are devoted to lobbying). The fact that a precise percentage of time or resources is not given in the prohibition closes possible technical "loopholes" that would otherwise arise if such a figure were given. The test is a balancing test. However, such tests are used to guide courts and lawyers in everyday practice and should supply adequate guidance to recipients.

If the organization receiving dues from a recipient does all of its position-taking with non-LSC funds, and if a substantial purpose of the organization is the taking of positions on matters pending before a legislative or administrative body, then the recipient would still be prohibited from paying dues to that organization (unless the organization is a bar association). Any other interpretation of the prohibition would allow, indirectly, the expenditure of Federal funds to accomplish an end for which the direct expenditure of Federal funds is prohibited. This interpretation follows the concerns about recipient lobbying expressed by Congress in the legislative histories, not only of the most recent appropriation bill, Pub. L. 98-166, but also of every bill affecting the Legal Services Corporation including the enactment of the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378. 42 U.S.C. § 2996.

Indeed, this interpretation is supported by the prohibition contained in § 1010(c) of this Act, which prohibits recipients from expending non-LSC funds for purposes proscribed by the Act unless the funds so expended are other public or tribal funds that are specifically provided for the purposes for which they are expended.

QUESTIONS ON LOBBYING REGULATION

QUESTION 3. As it relates to administrative advocacy (Sections 1612.5(f)(2) and 1612.6), the LSC staff recommended a change based on the comments received to the proposed rule. Subsequently, at the board meeting on Saturday, the regulations were changed on the motion of one of the board members. Could you supply us with a copy of the final version? In addition, please explain the substantive differences between the proposed rule, the subsequent staff recommendation, and the final rule?

ANSWER: The proposed rule contained no reference to rule-making proceedings or to negotiations prior to actual adjudication. The staff recommendation allowed for an informal negotiation stage (extra-adjudication) and for limited representation of eligible clients in rule-making proceedings where an individual client's legal rights were involved. Specifically, the staff proposed to permit "Such legal assistance to an eligible client in a rule-making proceeding as is necessary to assert a specific claim or application directly involving the client's legal rights or to protect existing legal rights of the client which could be impaired by the rulemaking." The Board voted to delete the words "... or to protect existing legal rights of the client which could be impaired by the rulemaking." (See attachments) The purpose of the Board amendment was to make clear that a client whose rights were impaired by a rulemaking could only be represented to the extent necessary to assert a particular application, claim or case. The revisions were made to sections 1612.5(f)(2) and 1612.6 to permit representation in a rulemaking proceeding with respect to a particular application, claim or case, but not in instances in which the rulemaking affects the client in a manner similar to a significant segment of the public whose interests have probably already been articulated to the rulemaker. The Board's desire was to closely adhere to Congressional intent that the rider not provide a blanket permission for the provision of legal assistance in all rulemaking proceedings, but only to permit the assertion of the specific claim, application or case by a specific client concerning a legal right or responsibility. In so stipulating, the staff and the Board gave particular weight to the report of your committee accompanying the 1983 Continuing Resolution in which this provision first appeared, explanations of congressional intent provided our staff by Senator Rudman's Counsel, and Senator Hatch's statement when offering his substitute in October 1984.

QUESTION 4. Section 1612.5(c)(6) prohibits the use of LSC funds to "assist others to influence legislation through legislative liaison activities." Please explain what this means and define legislative liaision activities?

ANSWER By its terms, § 1612.5(c)(6) defines legislative liaison activities as, *inter alia*, "attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation." It is not the legislative liaison activities *per se* that are prohibited, but rather the performance of such activities on behalf of others who are attempting to influence legislation in a manner which would be prohibited if such others were carrying out such activities while being funded by the Legal Services Corporation.

QUESTION 5. Do neutral reports to eligible clients and client groups regarding proposed changes in legislation constitute "an indirect suggestion" for them to take action under the prohibition relating to publicity and propaganda under Section 1612.5(d)?

ANSWER Not *per se*. Such a determination must be based on a review of the document as a whole. Of course such reports should relate to matters upon which the clients have specifically requested representation as stated in § 1612.5(e)(4).

In many respects, it is not clear what constitutes permissible administrative and legislative lobbying and what is impermissible, although I concede that it may not have been possible to avoid all confusion. In order to get a feel for what the Corporation considers permissible lobbying, I would like to get your response to the appropriateness of a few examples.

QUESTION 6. Suppose a state legislature is considering a change in the support laws that would be beneficial to program clients and that such change in the pending bill would go into effect only for support proceedings brought after the date of enactment. Could a legal services program report on this legislation and changes in its status to other programs so that attorneys might be able to intelligently choose whether to wait to bring new divorce or custody actions until after the legislation became effective?

ANSWER Yes -- Section 1612.5(e)(4) specifically permits the distribution of information on the content and status of proposed legislation to legal services employees and cooperating private attorneys. However, such a publication could not solicit communications to the legislature in support or opposition to the legislation.

QUESTION 7. More generally, would a legal services program be able to monitor current legislative developments in a state and report on those in an objective manner to legal services programs in that state?

ANSWER Section 1612.5(c)(6) permits monitoring of legislative developments and permits such reports. However, such monitoring is not to be done for the benefit of persons attempting to influence legislation.

QUESTION 8. Under administrative advocacy, in light of your language relating to "asserting" a claim involving a client's legal rights, could a community organization of low income individuals seeking to set up a shelter for battered women be represented by legal services counsel as they go before a zoning board seeking a variance?

ANSWER Assuming that the community organization met the requirements of Part 1611 on eligibility, such a client could be represented on such a matter by legal services counsel. This is exactly the type of adjudication/rulemaking that the language of the regulation was designed to allow. (See Section 1615.5(f)(2)(i) and (iii) and Section 1615.6(a) and (c)).

QUESTION 9. Similarily, could counsel approach a school board on behalf of parents who want their children transported to and from school by bus so they will not have to walk through an unsavory part of town?

ANSWER Again, assuming that the parents on whose behalf the counsel would approach the school board were eligible clients, the sections cited in Question 6, above, would permit such representation.

QUESTION 10. Suppose a state welfare agency maintains a list of individuals and organizations to which it sends proposed rules for comment, a list that includes a legal services program. Could that program respond to a request made to all members of the list for comments on a proposed new welfare regulation?

ANSWER The program could respond to such a request specifically addressed to the legal services program subject to the requirements of 1612.5(b)(1) and (f)(3).

QUESTION 11. A legal services attorney is representing a client before a state welfare agency on an interpretation of a welfare eligibility regulation. While this matter is pending, the agency proposes a revision in that regulation. Could that attorney, if he feels it is desirable, represent his client by participating in the rule-making process?

ANSWER The attorney could participate in a rulemaking process to the limited extent necessary to assert his client's particular claim, i.e. bring to the rulemaker's attention an impact of the rulemaking on his client's claim that differs from the impact of the rulemaking on a large number of similarily situated persons.

QUESTION 12. Could a legal services program inform a client group about changes in proposed legislation which would affect the group's members adversely even if the information was provided neutrally and did not suggest any response? What if the client group then sought to influence the legislation based on the information provided by the legal services program? Would that affect the validity of the program's action?

ANSWER Such dissemination would be prohibited by the terms of § 1612.5(e)(4) if the program is merely informing the client population generally. The program may inform a specific client group of such changes if such group has specifically sought representation in a matter closely related to the legislation. The subsequent use of the information by the client group is not relevant to whether a violation of these regulations has occurred.

Delivery Research and Experimentation

The Corporation has budgeted $20 million in FY 1985, or 40 percent of the proposed increase in the LSC budget, for a new program entitled "New Directions for the Private Bar." The budget justification, however, provides no details as to how this program will work.

1. Exactly how will the $20 million be used? How will grantees be selected? What parts of the Country will be served?

A. There are three major aspects to this program: private legal clinics, law school clinics, and private contracts to serve areas with unmet needs. In deciding where to locate a private law firm project we look at areas where a particular need is not being met as well as it can be. A comprehensive review of over 60 cities was conducted by staff to determine where there were unmet legal needs. Examples are Laredo, Texas, which is undergoing grave credit and bankruptcy problems due to the peso devaluation; Portland, Oregon, and Pittsburgh, Pennsylvania, where there are numerous plant closings and high unemployment resulting in a great need for bankruptcy and unemployment compensation cases; Belton, Texas, where there is a flood of low income military personnel and a great need for divorces; Jacksonville, Florida, where there is a tremendous backlog of divorces and an overflow of social security and S.S.I. cases; and in Orange County, California, where there is a tremendous problem in the landlord-tenant area and where we will be awarding contracts for unlawful detainer cases.

We discuss the project with the local legal services program to see if it is interested in participating and with the local bar association to determine its interest. The program's assistance is needed in screening and referring cases and the local bar association is needed in evaluating the bidder's ability to meet the contract and its accessibility to people.

We had originally planned on studying 8 projects this summer with an expenditure of $1.5 million dollars. However, after the first two rounds of contracts were let in Jacksonville and Des Moines, it was evident that the project could be expanded to at least 16 areas with the same amount of funding. As a result, the number of cases expected to be handled for the $1.5 million has increased from 6,000 to 14,000.

The cost figures for Jacksonville and Des Moines are quite revealing. Through discussions with the Jacksonville Bar Association and Jacksonville Area Legal Aid estimates were developed that private contracts could be made for 750 divorces, 200 S.S.I. cases and 360 juvenile dependency cases, for a total of $377,500. In Jacksonville, after public notice, announcements to the Governor of Florida and the presidents of the state and local bar associations, and meetings with bar leaders and bidders, ten bids were received. At the conclusion of that competitive bidding process, contracts for the same number of cases were let for a total of $134,950, or almost one third of the original estimates. In Des Moines, after following the same process, contracts were awarded for 1,000 divorces, 250 bankruptcies, and 250 wills for a total of $132,500 as opposed to the original estimate of 212,500.

The response from programs and local bar associations has been phenomenal, with those groups in more than 40 cities expressing an interest in the project, many of which contacted the Corporation after reading or hearing about the project.

B. The second aspect of the program involves law school clinics. In preparation for the Law School Civil Clinical Project, the Corporation contacted all segments of the legal community to assess support for the project, including all local program directors.

Over 50% of all those program directors who responded to the request for comments were enthusiastic about the concept of using law school clinics to augment existing programs. A similar survey was taken of law school deans. Those survey results indicated strong support among the law school community for augmentation of service delivery through the use of law school clinics.

Once the request for proposals from law schools was issued by the Corporation, comments concerning the solicitation were sought from the governors of all states and United States territories. Over one third of those contacted responded; and all were encouraging about the use of law school clinics.

The Corporation decided to commit up to $1.2 million for grants to up to 12 law school clinics geographically disbursed around the country to help Corporation grantees in delivering civil legal assistance to the poor, and in that regard mailed materials describing the program to approximately 190 law schools. Fifty-seven submitted proposals for grants.

After the proposals were received, they were initially evaluated by a committee chaired by William Pincus, former head of the Council on Legal Education and Professional Responsibility. Assisting Mr. Pincus were Richard Taylor, Executive Director of Legal Services of North Carolina, and staff representatives from LSC's Office of Program

Development. The committee then made recommendations to Peter Broccoletti, Director of the Office of Program Development, who examined the proposals and then made recommendations to the President of the Corporation.

Initially, LSC awarded the following nine grants:

Vermont Law School	$70,000
University of Virginia	95,000
Loyola University, New Orleans	90,000
Indiana University-Indianapolis	90,000
Southern Methodist University	70,000
St. Mary's University	90,000
University of North Dakota	60,000
William Mitchell School of Law	70,000
University of the Pacific McGeorge School of Law	65,000
TOTAL	$700,000

The proposals are still under review and additional grants may be made in the near future.

The primary function of the project is to test whether student legal clinics can be an efficient and effective means of augmenting the work of existing legal aid programs. However, there are three additional goals of the law school clinic program: to enhance the education of law students through participation in the delivery of legal services to poor clients; to create a future group of lawyers interested in providing legal services to the poor, either as a career or as an integral part of private practices; and to increase cooperation between LSC and all segments of the legal community.

Both of these programs hold great promise for increasing the delivery of legal services to the poor. Although actual service figures are not yet being developed, the responses from the private legal community, law schools, bar associations, and legal-aid programs, demonstrate that these projects will be efficient and cost-effective and should be greatly increased.

The Corporation would propose to continue these research projects for one year and to allocate $10 million and $5 million respectively to private legal clinics and law school clinics. The former amount would enable the Corporation to expand that project into 50 cities and would provide services for nearly 100,000 clients based upon our current estimates of 14,000 cases for $1.5 million. Thus, this expenditure is very cost effective since the Corporation in 1983 served 1.3 million clients with $210,000,000 allocated to the basic field programs.

C. The third element of this program involves individual contracts with private lawyers to handle legal matters for the rural poor which are not being addressed by current Corporation grantees. Data from the 1980 census shows that there were 7,721,273 persons with incomes below the poverty level living in rural areas and 10,816,557 with incomes below 125% of poverty.

The two most significant aspects of the special needs of the rural poor are the relatively low proportion of attorneys to population and the disproportionate effects of retrenchment on rural areas. The 1980 census data counted 49,534 attorneys in rural areas and 497,230 "people working as lawyers" in the nation as a whole. This translates to 83 attorneys for every 100,000 people in rural areas in 1980, as opposed to nearly 220 for every 100,000 in the nation as a whole and 267 per 100,000 in urban areas.

In 1979, the Corporation conducted a study on the special problems of access and the special unmet legal problems of residents of sparsely populated areas. Special Legal Problems and Problems of Access to Legal Services (Dooley, John A.; Houseman, Alan W.; Lewis, Andrew T.). That report to Congress, required by Section 1007(h) of the Legal Services Corporation Act of 1974 as amended, concluded that there were access difficulties for the rural poor, the most obvious difficulty being distance from an office. The study also concluded that there were problems of the rural poor which were not being addressed, and identified aspects of program operation which might be leading to lower quality legal services -- extremely small offices with few resources, a great deal of attorney and paralegal time spent out of the office traveling to multiple intake sites, a high rate of turnover and low level of staff experience.

In Rural Legal Services From the Pit To The Pendulum (Massey, Jim; Byers, Ron), Research Institute on Legal Assistance of the Legal Services Corporation, July, 1981, the authors stated:

> The availability of legal services for the poor in rural areas is a recent occurrence. Before the establishment of the Office of Economic Opportunity, legal aid was confined to the major cities. With the advent of federal funds to support legal services, some programs were established in rural areas, but, by and large, legal services remained confined to metropolitan areas on the east and west coasts. It was not until the creation of the Legal Services Corporation and the appropriation of a substantial increase in funds that there were legal services programs established throughout the country. In 1975, 2,273 of the nation's 3,144 counties, almost all of them rural, were without legal services. By 1981, residents of each county in the country had legal services available to them.

However, following the Congressional cut of the Corporation's budget for fiscal year 1982, many legal aid offices in rural areas were closed. In early 1983, the American Civil Liberties Union published a Public Policy Report and noted that over 300 field offices were closed and that other offices operated only during limited hours. The report concluded that "branch offices were particularly hard hit, which had a disproportionate impact on the rural poor" (p. 3). The report states that circuit riding "all but ceased for lack of funds" and that "satellite offices operate at greatly reduced hours, if at all, and are frequently staffed only by part-time receptionists" (p. 11). The report quotes various project directors regarding the effect of the unequal cuts on the rural poor and concludes that their legal problems are enormous and rapidly growing. No Justice For The Poor - How Cutbacks Are Destroying Legal Services (Siegel, Loren; Landau, David), March 23, 1983.

The Corporation proposes that $5 million of the $20 million request for the 1985 budget be used for private attorney cases which can be targeted to meet the needs of the rural poor and to take advantage of the efficiency and effectiveness of legal clinics or attorneys with specialized experience in those areas.

The ACLU report referenced above noted that most programs had either stopped intake in family law altogether or were taking only those cases involving spouse abuse or child abuse; that debt collection cases were eliminated or sharply curtailed by virtually all the programs surveyed; and that most programs had completely stopped intake of Social Security Disability cases (p. 20). These are precisely the types of problems the $20 million could be targeted to address through private bar delivery in the form of private legal clinics, private attorney contracts, and law school clinics.

PRIVATE LAW FIRM PROJECT

...COULD YOU SUMMARIZE FOR US THE DATA OR STUDY RESULTS THAT YOU HAVE WHICH DEMONSTRATES, FOR INSTANCE, THE PRIVATE LEGAL CLINICS CAN PROVIDE THE SERVICES MORE EFFICIENTLY AND EFFECTIVELY TO POOR PEOPLE THAN THE EXISTING PROGRAMS. DO YOU HAVE ANY EMPIRICAL DATA AS OF THIS POINT, OR IS THE $20 MILLION GOING TO TRY TO DEMONSTRATE THAT?

The project to which you refer, the Private Law Firm Project, is a continuation of the contracts with law firms model nominally tested during the Delivery System Study (DSS). After examining the nine DSS-funded projects, the Corporation reported to Congress in 1980 that there was no significant difference in cost or quality of service between the staff attorney model and the contracts with private law firms. The Delivery System Study concluded that the most promising delivery model was a mixed model in which a mixture of several delivery models are used to take advantage of the strengths of each.

The Private Law Firm Project, though funded in 1984 through the Office of Program Development is not strictly a demonstration vehicle. The contracts let through the project have not been made with the purpose of studying the delivery vehicle--the DSS had already concluded that a contract-with-private-law-firm-approach would yield high quality legal services at costs comparable to those of staff models. The contracts are being made in order to supplement, through a high-volume, cost-effective mechanism, routine types of services. The design of the project contemplates cooperation with existing programs.

The Private Law Firm Project does utilize an analysis of the basic principles of business management in order to meet the goal of serving as many eligible clients as possible for the dollar resources available. Those business principles are manifest in (1) the use of competitive bidding for these legal services contracts in order to obtain the most cases for a fixed fee; (2) the contracting for a fixed large block of cases which reduces the contractor's risk by guaranteeing a "budget" of cases; and (3) the utilization of a definition of routine, straightforward case services which reduces the contractor's risk by guaranteeing a "budget" of obligated case services.

One difference to note is that the contracts under the Delivery Systems Study were not let under competitive bidding nor was there an attempt to reduce cost by taking bids on a high volume of cases. The bids that we have received in Jacksonville and Des Moines, using competitive bidding, certainly suggest that we can obtain a phenomenal number of new cases for a small investment through the use of competitive bidding. We do not yet have data on the quality of the cases produced but the local bar associations were extremely complimentary of the reputations of the firms which were awarded the contracts. The contract awards were as follows:

JACKSONVILLE, FLORIDA

Uncontested Divorces	550	at	$ 85	per case
	200	at	$125	per case
Social Security/SSI	200	at	$100	per case
Disability	200	at	$100	per case

Juvenile Custody/	240	at	$100	per case
Adoption	120	at	$160	per case

DES MOINES, IOWA

Uncontested Divorces	1000	at	$100	per case
Wills	250	at	$ 25	per case
Bankruptcy	250	at	$ 90	per case

The project in Jacksonville, originally estimated to cost $377,500, will cost only $134,950 while that in Des Moines will cost $128,750 rather than $212,500. Thus far contractors have been selected in Jacksonville and Des Moines and bids have been solicited in Laredo, Pittsburgh, Fort Smith and Portland (Oregon).

Contractors' offers for the performance of these services continue this trend of exceptionally good prices. While the comments of the local bar associations on the quality of bids and the reputations of the bidders have not yet been received for the following cities, per case costs expected are:

PORTLAND, OREGON

Bankruptcy	150	at	$120	per case
Child Support	240	at	$100-120	per case

PITTSBURGH, PENNSYLVANIA

Unemployment Comp.	400	at	$73-75	per case
Bankruptcy	100	at	$95	per case
Child Support	100	at	$160	per case

These prices are well below those estimated from locally advertised prices, the local program, and/or the local bar association.

I should note that the General Accounting Office in 1979 in its Report of the Comptroller General, FGMS D-79-46 (October 19, 1979) urged that the Corporation give closer attention to the phenomenon of highly systematized law firms (legal clinics, prepaid legal services, etc.) which, in the private sector, were significantly increasing the volume and reducing the cost of delivering legal services. The DSS attempts to study legal clinics were feeble and no conclusion may be drawn from DSS on this subject. LSC is interested in studying this phenomenon, and the results thus far are promising in terms of increased delivery.

Your question presupposes a competition between utilizing private attorneys to aid poor clients and continuing to fund existing grantees. Nothing in the Corporation's budget request or the Corporation's actions support such an assumption. Rather, the Corporation's request supports the prudence of continuing to augment services through cost-effective mechanisms, especially where the services can be termed routine. The requested $20 million would be used to supplement presently viable programs.

The Delivery System Study found that the costs and quality varied more within each model, depending on the quality of administration and management, than it did between the staff attorney model, judicare, contracts or pro bono. The productivity of staff attorney programs varies greatly, as you may gather from the following excerpt from our 1984 Fact Book. This performance data cannot be compared directly to the present data from the Private Law Firm Project, but it raises hard questions about how well and how efficiently poor clients are being served by some programs. It is a fact that some programs handle and/or litigate as much as 4 times as many cases as other like-funded programs. The Private Law Firm Project results to date raise questions about ways to resolve such disparities in service--disparities potentially injurious to eligible clients in immediate need of legal assistance. The "average" per case cost for the Private Law Firm Project of $75 to $125 per case certainly compares well to "average" staff program per case costs of "$800 or $1200 or $1500. But these comparisons can only raise further questions; they cannot yet make definitive statements because of the lack of definition about actual program operations. Jacksonville Area Legal Aid and Polk County Legal Aid of Des Moines, both well-run programs, certainly need not fear that they will be "shown-up" by pilot private law firm projects in their communities because they are conscientious, well-run programs. It is not clear that such conscientiousness and efficiency is present in every program the Corporation funds. Worse, the variations in program operations and case production shown in the 1984 Fact Book indicate that many communities may not be receiving the legal services they need and want.

The results of the Private Law Firm Project clearly indicate that certain routine services that are needed by poor clients can be handled inexpensively in urban areas across the country. Supplementation of existing service in urban areas should be possible through this model nationwide, with consistent positive results. Extrapolating from the existing data, LSC could increase by 50% the number of litigated cases presently done for poor persons each year with a project budget of $10 million. This would allow the adequate use of competitively bid, high-volume contracts in the many diverse jurisdictions across the country. Because of the varied civil procedures and court rules throughout the country, the effectiveness of competively bid contracts should be established separately for each.

Ongoing evaluations of all LSC-funded programs will continue. However, the ability of the private law firm contract model to meet the needs of eligible clients throughout the country and alleviate service disparities is clearly present. Full analysis of these issues must await the development of accountability procedures that define precisely program operations. However, the Private Law Firm Project now holds the potential for the effective enhancement of legal services to poor persons in urban areas without the wide variations in service documented through the Corporation's past funding of staff programs.

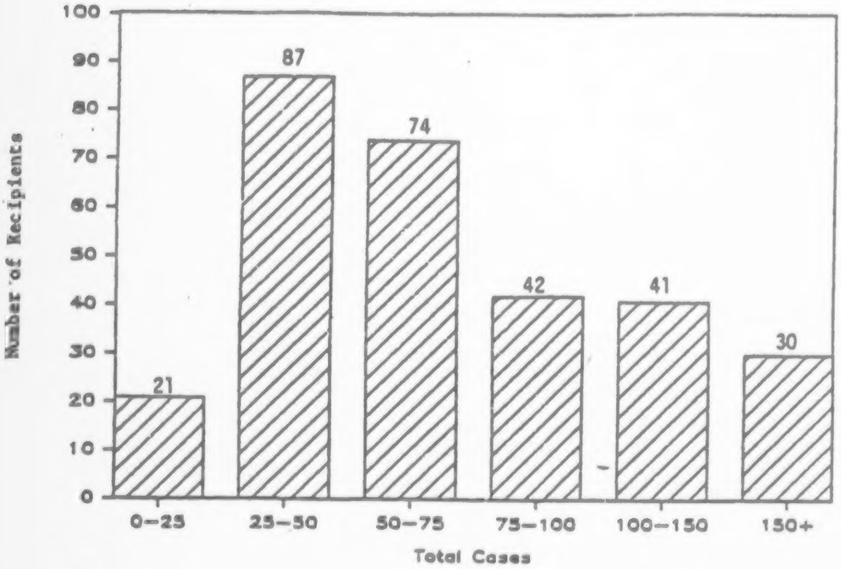
We certainly believe that there are many, many communities where our private law firm project would produce many more cases for each dollar invested than an additional dollar invested in the staff program.

CASELOADS AND STAFFING PATTERNS

Most of the Fact Book presents information in the form of national totals and averages. These averages obscure considerable differences in the staffing patterns, caseloads and funding levels of programs serving essentially the same number of poor people. This section presents a comparison of several individual programs in relation to the same funding level or client population.

1983 CALENDAR YEAR

TOTAL CASES PER $10,000 BASIC FIELD FUNDING[1]

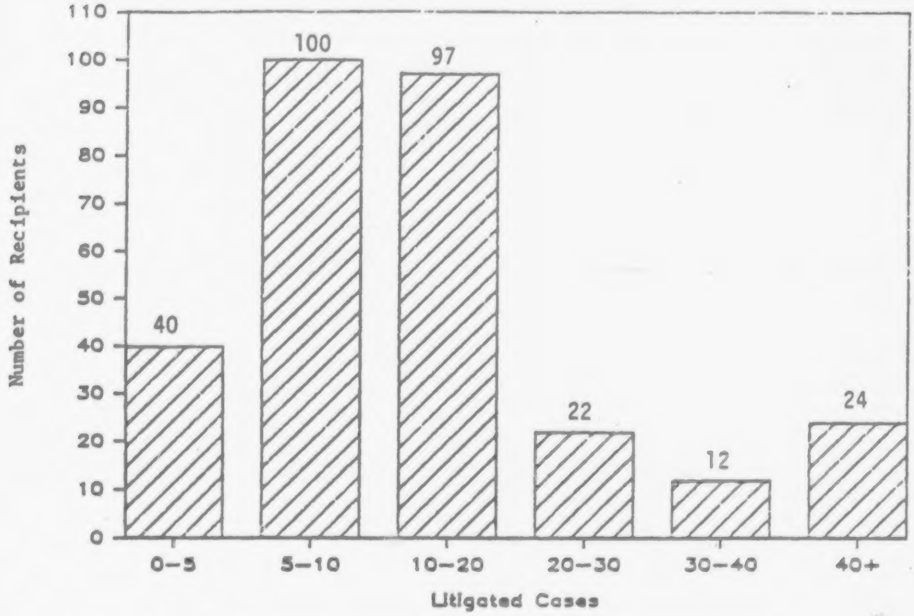


---

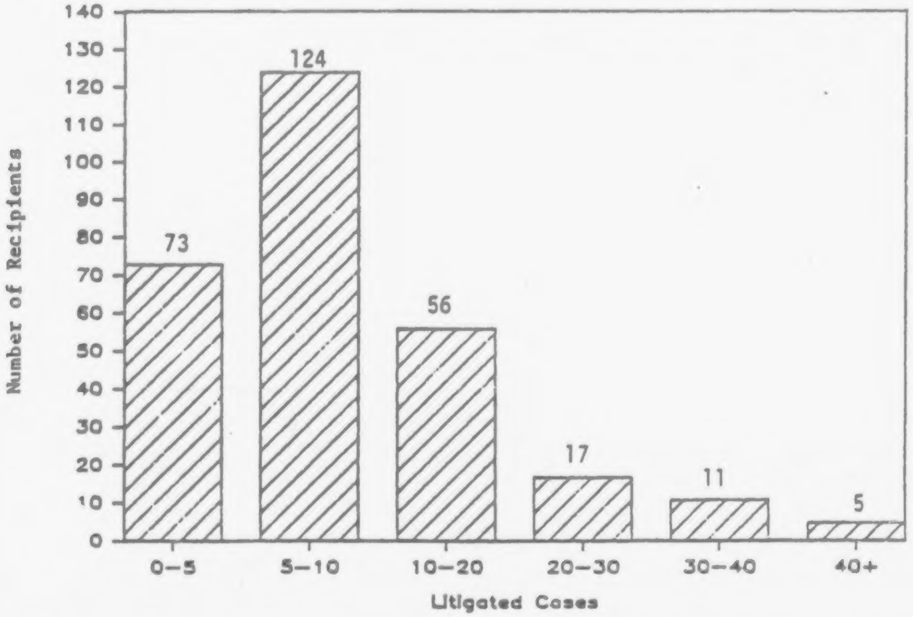
[1] For this analysis only cases reported under the Basic Field category are included.

1983 Calendar Year

LITIGATED CASES PER $10,000 BASIC FIELD FUNDING[1]



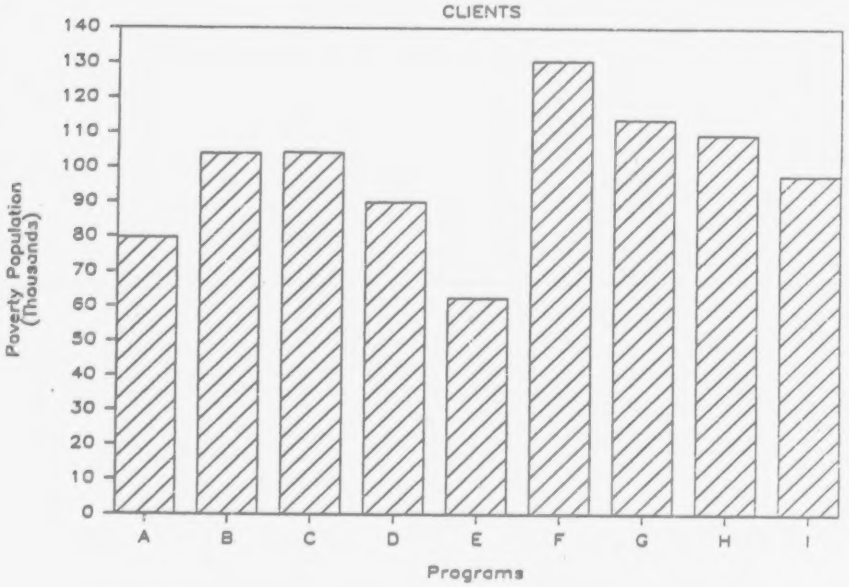
LITIGATED CASES PER 1,000 POVERTY POPULATION[2]



[2] Eight former Delivery Systems Study (DDS) projects and Antioch Law School Clinic are excluded from the graph comparing cases and poverty population since these projects are not population-based.

Million Dollar Legal Services Programs

1983 CALENDAR YEAR

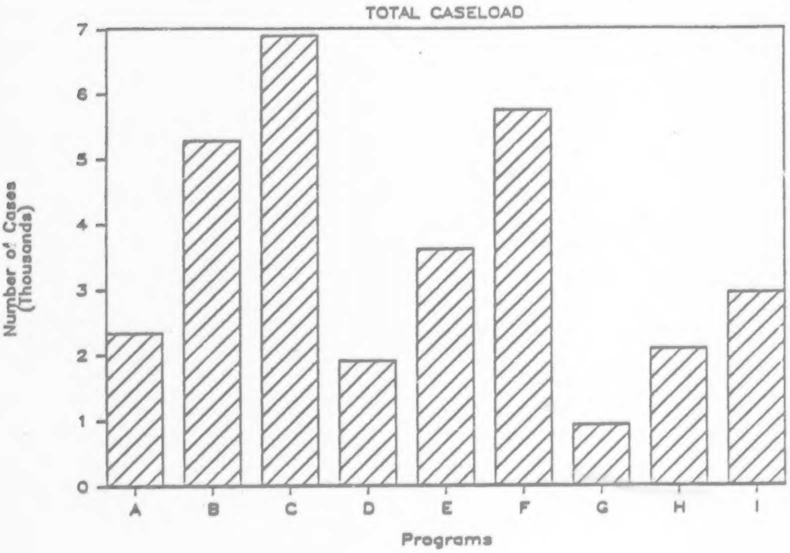


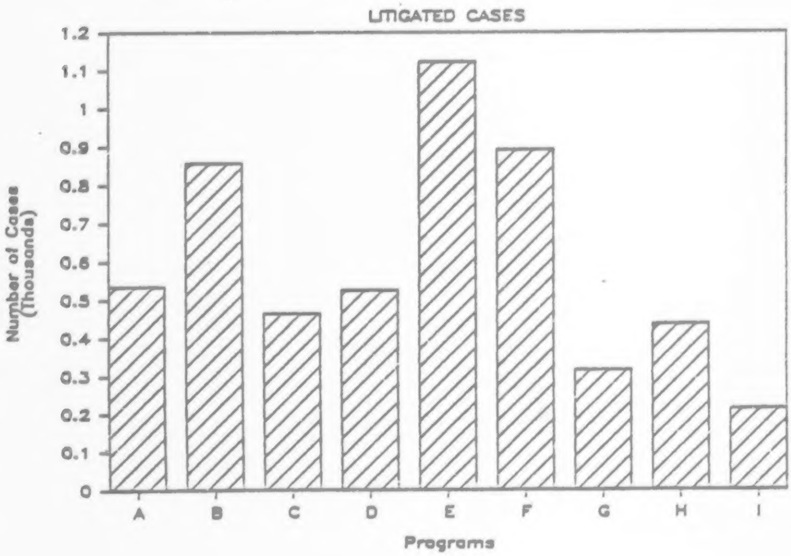
THESE CHARTS ON THIS AND THE NEXT TWO PAGES ILLUSTRATE THAT WITHIN ALL GRANT RECIPIENTS THAT ARE FUNDED AT $1 MILLION, THERE IS LITTLE SIMILARITY IN THEIR TOTAL POVERTY POPULATIONS, CASELOAD, LITIGATION, ATTORNEYS, OR TOTAL STAFF.

Program Identifier	Program Name	Funding All Sources	Poverty Population
A	Legal Services of Southern Piedmont (South Carolina)	$1,014,566	79,847
B	Legal Aid of Western Michigan	1,017,737	103,969
C	Cook County Legal Assistance Foundation (Illinois)	1,032,351	104,274
D	North Louisiana Legal Assistance Corporation	1,058,723	90,159
E	Multnomah County Legal Aid (Oregon)	1,060,578	62,606
F	Central Minnesota Legal Services	1,063,575	130,455
G	Micronesian Legal Services Corporation	1,064,514	113,713
H	Birmingham Area Legal Services Corporation (Alabama)	1,077,064	109,528
I	Fresno-Merced Counties Legal Services (California)	1,083,103	97,855

Million Dollar Legal Services Programs

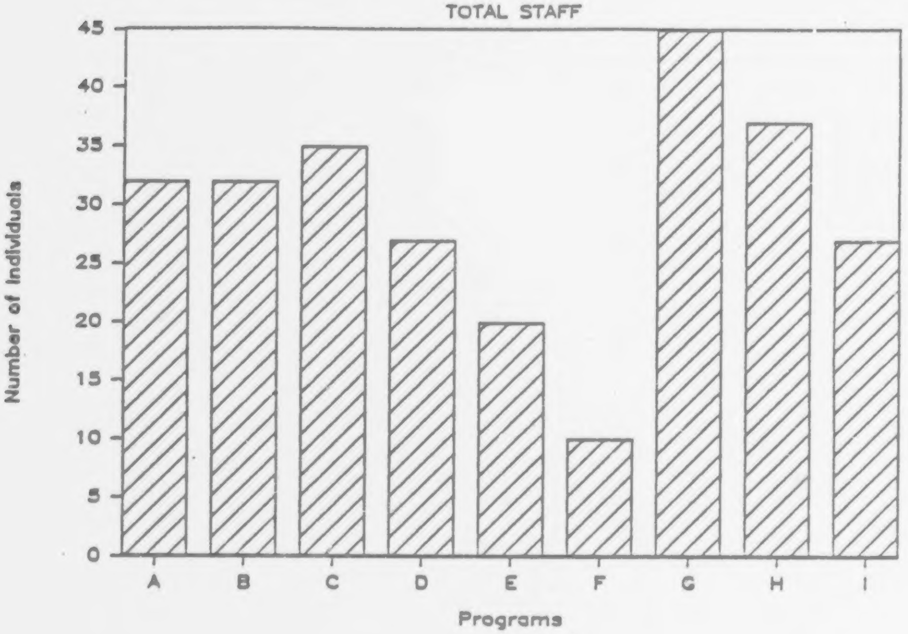
1983 CALENDAR YEAR

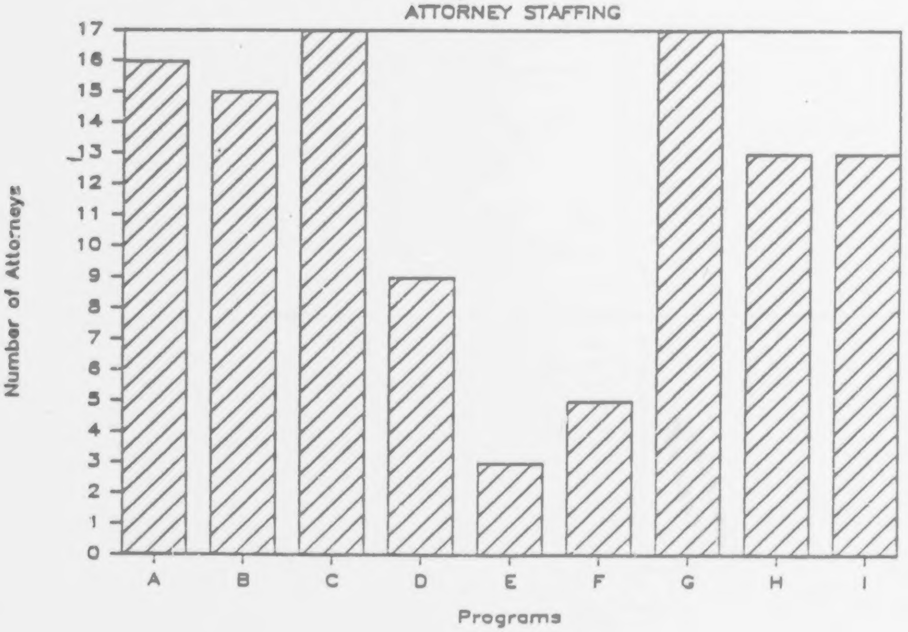




Million Dollar Legal Services Programs

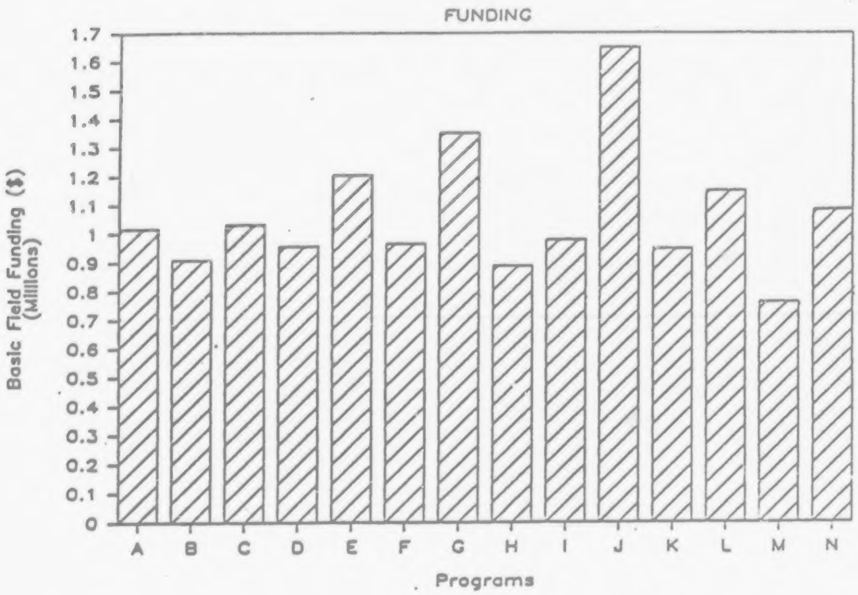
1983 CALENDAR YEAR





Programs Serving 100,000 Poor People

1983 CALENDAR YEAR

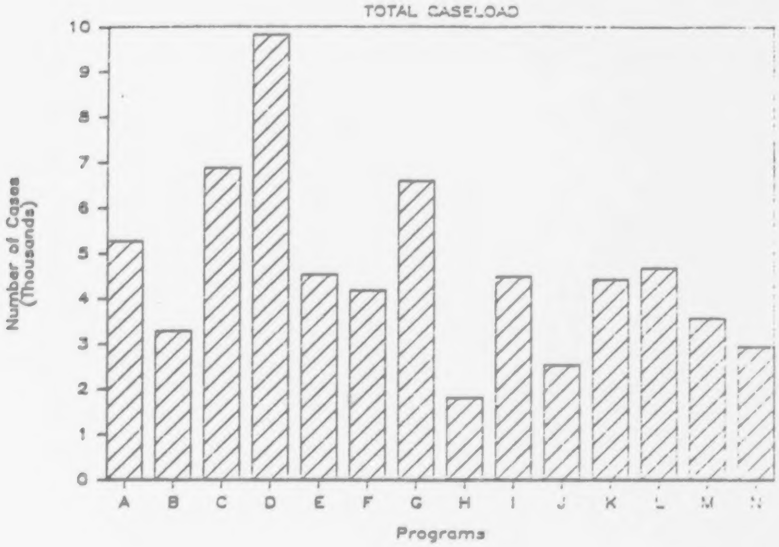


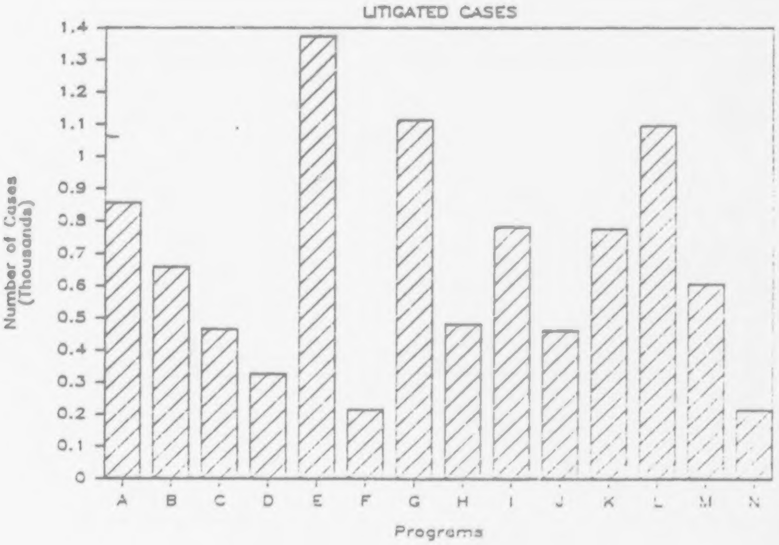
THESE CHARTS ON THIS AND THE NEXT TWO PAGES ILLUSTRATE THAT WITHIN ALL PROGRAMS THAT HAVE 100,000 POVERTY POPULATION, THERE IS A WIDE RANGE OF FUNDING, CASELOAD, LITIGATION, ATTORNEYS AND TOTAL STAFF.

Program Identifier	Program Name	Poverty Population	Funding All Sources
A	Legal Aid of Western Michigan	103,969	$1,017,737
B	Tidewater Legal Aid Society (Virginia)	102,706	909,144
C	Cook County Legal Assistance Foundation (Illinois)	104,274	1,032,351
D	Legal Services Program of Northern Indiana	104,828	956,802
E	Central Arkansas Legal Services	98,261	1,204,589
F	Central Florida Legal Services	98,054	965,492
G	Jacksonville Area Legal Aid (Florida)	101,522	1,351,784
H	Legal Services of North Florida	98,049	888,182
I	Gulfcoast Legal Services, Incorporated (Florida)	104,605	980,041
J	Acadiana Legal Services (Louisiana)	99,701	1,649,797
K	Central Mississippi Legal Services	101,705	947,538
L	Southern Arizona Legal Aid	96,256	1,150,537
M	El Paso Legal Assistance (Texas)	101,654	762,251
N	Fresno-Merced Counties Legal Services (California)	97,855	1,083,103

Programs Serving 100,000 Poor People

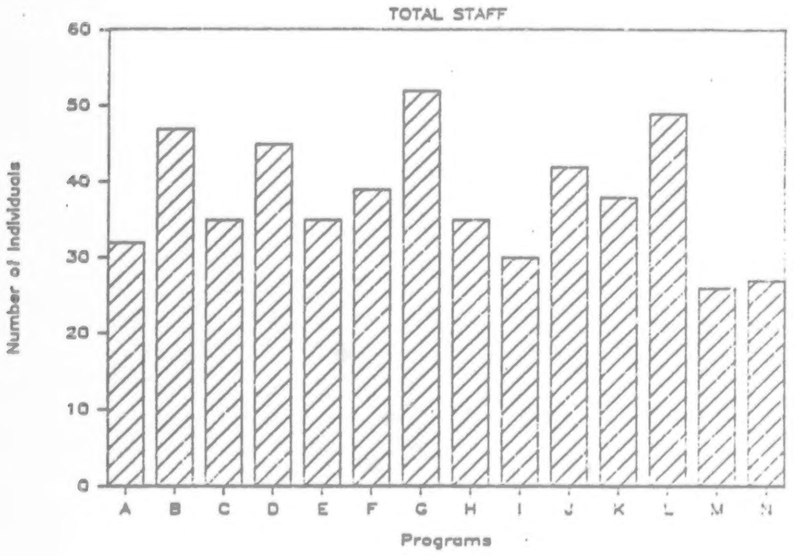
1983 CALENDAR YEAR

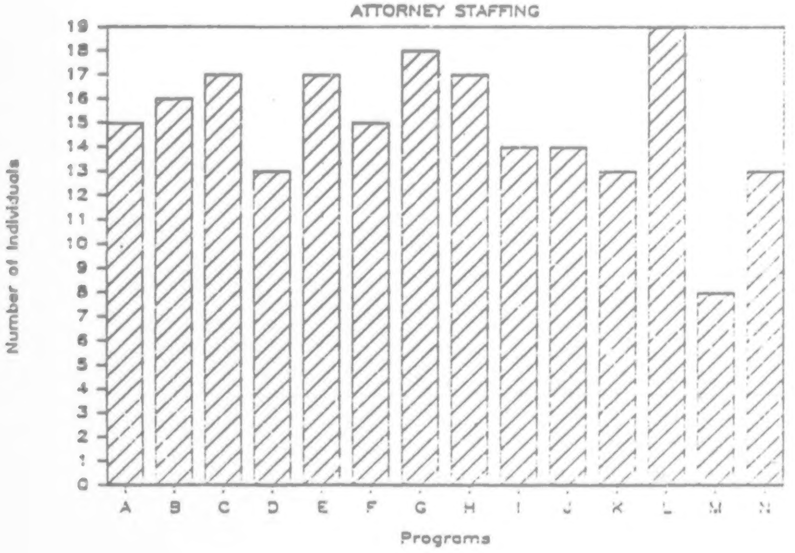




Programs Serving 100,000 Poor People

1983 CALENDAR YEAR





GLOSSARY

Advice or Brief Representation

Cases closed through 'Advice', 'Brief Service', 'Client Withdrew or Did Not Return', 'Insufficient Merit to Proceed', or 'Referred After Legal Assessment'.

Brief Service

Case was resolved by action taken at or soon after intake on behalf of a client.

Carryover

Unspent LSC funds carried forward to the next year.

Case

A distinct legal problem or set of closely related legal problems of a client, and the legal activities or processes used in resolving those problems. All case information pertains to a closed case—a case in which there is a resolution of the client's problem, or an instance in which the client's problem is not resolved but it is determined that no further action will be taken.

Class Action Suit

An action where one or more members of a class sues or is sued as representative parties on behalf of all members of the class.

Insufficient Merit to Proceed

Although the applicant is accepted as a client, new facts and circumstances arise that disclose that there are no legal grounds upon which to pursue the issue.

Judicare

Judicare delivery systems pay attorneys in private practice on a fee-for-service basis according to a previously established payment schedule to provide legal services to eligible persons within a specified geographic area.

Litigated Cases

Cases closed through 'Administrative Agency Decision', 'Court Decision' or 'Negotiated Settlement with Litigation'.

National Support Center

An LSC funded provider of support to Basic Field Programs on specific areas of the law.

NORC

National Opinion Research Center, Chicago, Illinois.

Per Capita

The amount of Basic Field funding per poor person in the program service area, determined by dividing the Annualized Basic Field Grant by the service area poverty population count.

Poverty Population

The 1980 Census count of persons in the service area whose 1979 incomes were below the federal poverty threshold, except for persons with incomes below 125 per cent of the poverty threshold in Alaska, and 115 per cent of the poverty threshold in Hawaii.

Referred After Legal Assessment

During the course of the case, it is determined that additional information or new developments on the case prevent the program from continuing to handle the case and the case is referred outside the program (e.g. due to a conflict of interest).

State Support

A LSC funded provider of support to legal services programs within a particular state.

Strict Equalization

Hypothetical allocation of Basic Field funding to all programs in direct proportion to each recipients share of the Nation's poverty population.

Also, for the record, if you would please give us an estimate of what your cost would be to expand the rural services capabilities of existing programs, vis-a-vis what you are proposing.

I do not believe these funds should be automatically distributed pro rata to every existing grantee. In the first place, a number of the Corporation's basic field programs are wholly located within urbanized areas, and, therefore, the funds would not go to serve the targeted population. Secondly, the statistics contained in the Fact Book previously submitted to the Committee clearly show that the basic field programs have immensely different abilities to utilize their funding equally. For example, 21 of the 295 programs handle between 0-25 cases per $10,000 of basic field funding while 30 handle over 150 cases per $10,000.

In addition, many programs have closed offices and cut services and this has had an unequal impact on the rural poor. Some are not receptive to experimentation with different delivery mechanisms which would necessarily be used in this type of locality. An example of the latter recently occurred in the Phoenix area. We announced plans to allocate $375,000 for contracts with private Phoenix law firms that would then service 1,650 cases for eligible clients. Representatives of the local LSC-funded program condemned the proposal even though it would have addressed a significant unmet need described in their refunding application and meant an additional $375,000 to provide legal services for eligible clients in their service area.

We are also disappointed by recent private attorney involvement statistics and statements by several bar leaders that pro bono involvement has reached the saturation point. Although the Corporation has increased the private attorney involvement requirement from 10 percent to 12 1/2 percent, the budget allocations for payments to private attorneys have decreased from $25.5 million in 1983 (8.1 percent) to $17 million in 1984 (5.1 percent). It therefore appears that our programs are "staffing up" for private attorney involvement.

We are requesting that the Corporation be authorized to consider these and other factors when awarding these funds. This would be consistent with the statutory mandate to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance in both urban and rural areas" pursuant to Section 1007 (a)(3) of the Act.

There is virtually no proof that partially compensated private bar delivery, whether through clinics, contract services or judicare, will supplant or drive out pro bono efforts, as some have suggested. We have every reason to believe, as a result of the phenomenal bids for the private legal clinics project, that the cost of providing similar services through existing grantees will be higher. The cost will definitely not be higher for the projects we will fund. Moreover, we have not precluded existing grantees from applying for these funds.

Q: HOW WILL YOU USE THE MONEY FOR THE INSTITUTIONALIZED, ELDERLY AND HANDICAPED? WILL THEY GO TO THE NATIONAL AND STATE SUPPORT CENTERS THAT HAVE EXPERIENCE IN THESE AREAS? HAVE YOU DEVELOPED CRITERIA YET? WOULD YOU SUPPLY US WITH THOSE WHEN YOU ARE FINISHED WITH IT?

WHAT KIND OF CASES WOULD YOU VISUALIZE TO BE SERVICED HERE? FOR INSTANCE, CLASS ACTION SUITS AGAINST THE GOVERNMENT IN SOME CASES?

I WOULD LIKE YOU TO EXPAND ON THAT ANSWER FOR ME.

INSTITUTIONALIZED ELDERLY AND HANDICAPPED

The proposal for $7.2 million for service to the institutionalized elderly and handicapped is based on the reports of the Corporation to Congress in January 1979 and May 1980 on the problems of access to Legal Services of particular segments of the population (Section 1007(h) study). The latter report noted the lack of policy articulation by the Corporation on the unmet legal needs of persons who are institutionalized and the fact that the institutionalized are not included in the poverty population count.

The Corporation proposes in the first year of this effort to supplement the existing level of service to the institutionalized elderly and handicapped at a rate of $4 per individual (1.8 million based on 1980 Census Bureau data). This $4 per capita equalized amount compares with $8.23 per capita in the Corporation's basic field funding and recognizes the economies to be expected in services to individuals who are substantially similarly-circumstanced in physical location and the nature of legal assistance required.

The Corporation has a well-defined grant-making process through its Office of Field Services, and the mechanism of funding these grant requests would be similar to the provision of aid for services to migrant workers either as a component of existing programs or as independent grantees, depending on the evaluation of competitive applications. Criteria for the awarding of bids have not been finalized, but would include: extent of underserved target population; familiarity with provision of legal assistance to focus group; capability of testing innovative models of service delivery; extent of cooperation with existing agencies on aging; record and level of funding from other sources under the Older American Act; and plan for involving attorneys with substantial relevant experience.

The subject area of cases would include, inter alia, medicare, guardianship, alternatives to institutionalization, employment discrimination, and the production and/or preservation of low-cost housing alternatives.

Q: PLEASE SUPPLY FOR THE RECORD UNDER THAT FORMULA (Peterson) WHAT THE BASIC SERVICES AMOUNT WOULD BE AND THE PERCENT OF CHANGE FROM 1984 TO 1985.

ALLOCATION UNDER FORMULA

As stated previously, the Board of Directors has not made a final decision to adopt the Peterson formula. If adopted, the results would be as shown in the following table which sets forth the effect of implementing the Peterson formula in comparison with 1984 funding and the formula in the bill reported by your committee.

The table below assumes implementation of the Peterson formula in one year, without any provision for holding a program harmless. It would be my intention to recommend that no program's funding be reduced below 80% of its 1984 grant level or $10 per poor person whichever is less. This should provide for an orderly transition toward funding based on current demographic information. The second table shows the effect of such a hold harmless proviso.

The table does not include the amount of funding for the former Delivery Systems Study projects or the Antioch Law School which are not funded on the basis of the poverty population. The state in which such projects are located are noted by asterisks. The total funding, therefore, going to the District of Columbia, Vermont, etc. for legal services delivery exceeds that shown in all columns of the table.

June 27, 1984

LEGAL SERVICES CORPORATION

1985 APPROPRIATION - $297,550,000
COMPARISON OF FUNDING FORMULAS
H.R. 5712 vs LSC CONSULTANT PETERSON

STATE	1984	1984 Per Cap	1985 Peterson	1985 Peterson Per Cap	Peterson % Change	1985 H.R. 5712 (SENATE)	1985 H.R. 5712 Per Cap	H.R. 5712 % Change
Alabama	5,792,215	8.05	5,838,697	8.11	0.80	6,092,938	8.46	5.17
Alaska	1,009,640	10.06	567,857	10.16	-43.76	1,060,122	10.77	5.00
Arizona	2,186,465	6.97	2,354,379	7.51	7.68	2,463,769	7.86	12.69
Arkansas	3,405,362	8.39	3,277,505	8.07	-3.75	3,581,458	8.82	5.17
California *	21,379,967	8.14	21,500,853	8.19	0.57	23,421,005	8.92	9.55
Colorado	2,314,176	8.14	2,259,240	7.94	-2.37	2,518,257	8.85	8.82
Connecticut	2,207,825	9.10	1,997,363	8.23	-9.53	2,321,155	9.57	5.13
Delaware	465,097	6.80	576,660	8.43	23.99	521,813	7.63	12.19
D.C. *	1,469,419	12.96	1,055,015	9.31	-28.20	1,542,881	13.61	5.00
Florida	8,777,712	6.82	9,859,503	7.66	12.32	9,817,615	7.63	11.85
Georgia	6,686,017	7.56	6,399,051	7.24	-4.29	7,132,674	8.07	6.68
Hawaii	792,578	6.80	1,103,837	9.47	39.27	889,229	7.63	12.19
Idaho	794,162	6.80	849,884	7.28	7.02	891,007	7.63	12.19
Illinois	8,587,644	6.98	11,240,606	9.13	30.89	9,479,343	7.70	10.38
Indiana	3,632,210	7.04	4,429,476	8.58	21.95	3,937,478	7.63	8.40
Iowa	2,503,753	8.75	2,418,497	8.45	-3.41	2,632,850	9.29	5.16
Kansas	1,906,262	8.23	1,751,910	7.56	-8.10	2,005,019	8.65	5.18
Kentucky	4,938,086	7.89	5,021,174	8.02	1.68	5,275,494	8.42	6.83
Louisiana	6,263,244	8.19	5,586,532	7.30	-10.80	6,615,402	8.65	5.62
Maine	958,613	6.80	1,183,565	8.39	23.47	1,075,512	7.63	12.19
Maryland	2,750,551	6.80	3,525,508	8.71	28.17	3,085,968	7.63	12.19
Massachusetts*	4,792,215	9.00	5,043,520	9.47	5.24	5,107,167	9.60	6.57
Michigan	6,536,230	6.91	8,253,565	8.73	26.27	7,275,337	7.69	11.31
Minnesota	2,879,789	7.68	2,832,146	7.55	-1.65	3,034,187	8.09	5.36
Mississippi *	5,129,224	8.73	4,586,953	7.81	-10.57	5,419,808	9.23	5.67
Missouri	4,707,304	8.08	4,989,210	8.57	5.99	4,951,585	8.50	5.19
Montana	681,330	7.72	677,186	7.67	-0.61	716,851	8.12	5.21
Nebraska	1,401,506	8.63	1,358,029	8.36	-3.10	1,473,788	9.08	5.16
Nevada	492,781	7.22	560,476	8.21	13.74	544,467	7.98	10.49
New Hampshire*	536,920	7.12	590,981	7.83	10.07	574,874	7.63	7.07
New Jersey	4,910,086	7.12	6,344,190	9.20	29.21	5,438,538	7.89	10.76
New Mexico	1,592,320	8.12	1,429,316	7.28	-10.25	1,700,724	8.67	6.81
New York *	16,079,107	6.99	22,275,664	9.69	38.54	17,848,870	7.76	11.01
N. Carolina	6,785,326	8.08	6,848,760	8.16	0.93	7,147,612	8.52	5.34
N. Dakota	686,472	8.96	546,144	7.13	-20.44	721,755	9.42	5.14
Ohio	7,597,636	6.98	9,799,562	9.00	28.98	8,385,661	7.79	10.37
Oklahoma	3,134,190	7.96	2,900,155	7.36	-7.47	3,297,089	8.37	5.20
Oregon	2,047,676	7.48	2,208,652	8.07	7.86	2,190,978	8.00	7.00
Pennsylvania	8,819,553	7.29	10,711,776	8.85	21.45	9,521,141	7.87	7.95
Rhode Island	710,756	7.57	902,683	9.61	26.97	748,076	7.96	5.25
S. Carolina	4,035,174	8.06	4,009,100	8.01	-0.65	4,252,319	8.50	5.38
S. Dakota	789,489	7.74	810,316	8.02	3.65	841,920	8.25	6.64
Tennessee *	5,738,748	7.79	5,988,865	8.13	4.36	6,064,112	8.23	5.67
Texas	14,687,008	7.15	14,788,163	7.29	0.69	16,093,669	7.79	9.58
Utah	987,842	6.80	1,066,878	7.34	8.00	1,108,304	7.63	12.19
Vermont *	489,670	8.29	443,687	7.51	-9.39	515,019	8.72	5.18
Virginia	4,737,550	7.75	4,463,337	7.30	-5.79	5,088,893	8.32	7.41
Washington	3,016,670	7.64	3,195,518	8.09	5.93	3,225,504	8.17	6.92
W. Virginia	2,560,537	8.92	2,359,499	8.22	-7.85	2,692,198	9.38	5.14
Wisconsin	3,060,934	7.69	3,531,287	8.88	15.37	3,220,564	8.10	5.22
Wyoming	335,426	9.61	263,427	7.55	-21.46	355,097	10.17	5.86
Micronesia	781,496	6.87	868,678	7.64	11.16	867,378	7.63	10.99
Puerto Rico	13,483,530	6.80	15,150,093	7.64	12.36	15,127,783	7.63	12.19
Virgin Islands	421,998	13.29	244,134	7.64	-42.15	443,097	13.85	5.00
Guam	160,303	9.68	126,589	7.64	-21.07	168,572	10.17	5.16
TOTAL	223,632,294	7.59	242,973,769	8.24		242,435,869	8.22	

Note: Amount of Basic Field Funding under the Corporation's request exceeds that allocated under H.R. 5712 (Senate).

* Does not include funding for former Delivery Systems Study projects.

LEGAL SERVICES CORPORATION

July 10, 1984

1985 APPROPRIATION - $297,550,000
COMPARISON OF FUNDING FORMULAS
H.R. 5712 vs LSC CONSULTANT PETERSON
WITH HOLD HARMLESS

	1984		Peterson/80% 1984 or $10 Per Cap			H.R. 5712		
STATE	Funds	Per Cap	Funds	Per Cap	% Change	Funds	Per Cap	% Change
Alabama	5,792,215	8.05	5,835,237	8.11	0.74	6,092,938	8.46	5.19
Alaska	1,009,640	18.06	567,857	10.16	-43.76	1,060,122	18.97	5.00
Arizona	2,186,465	6.97	2,353,705	7.51	7.65	2,463,760	7.86	12.68
Arkansas	3,405,362	8.39	3,275,595	8.07	-3.81	3,581,458	8.82	5.17
California *	21,379,967	8.14	21,500,853	8.19	0.57	23,421,005	8.92	9.55
Colorado	2,314,196	8.14	2,258,712	7.94	-2.40	2,518,259	8.85	8.82
Connecticut	2,207,825	9.10	1,996,954	8.23	-9.55	2,321,153	9.57	5.13
Delaware	465,097	6.89	576,360	8.43	23.92	521,813	7.63	12.19
D.C. *	1,469,419	12.96	1,133,560	10.00	-22.86	1,542,881	13.61	5.00
Florida	8,777,712	6.82	9,856,879	7.66	12.29	9,817,615	7.63	11.85
Georgia	6,686,017	7.56	6,397,127	7.23	-4.32	7,132,694	8.07	6.68
Hawaii	792,578	6.80	1,103,837	9.47	39.27	889,229	7.63	12.19
Idaho	794,162	6.80	849,622	7.27	6.98	891,007	7.63	12.19
Illinois	8,589,644	6.98	11,235,358	9.13	30.80	9,479,343	7.70	10.36
Indiana	3,632,210	7.04	4,427,162	8.58	21.89	3,937,478	7.63	8.40
Iowa	2,503,753	8.75	2,417,205	8.45	-3.46	2,632,850	9.20	5.16
Kansas	1,906,262	8.23	1,751,450	7.56	-8.12	2,005,019	8.65	5.18
Kentucky	4,938,086	7.89	5,018,179	8.01	1.62	5,275,494	8.42	6.83
Louisiana	6,263,244	8.19	5,584,741	7.30	-10.83	6,615,402	8.65	5.62
Maine	958,613	6.80	1,182,931	8.39	23.40	1,075,512	7.63	12.19
Maryland	2,750,551	6.80	3,523,758	8.71	28.11	3,085,968	7.63	12.19
Massachusetts*	4,792,215	9.00	5,041,396	9.47	5.20	5,109,167	9.60	6.61
Michigan	6,536,230	6.91	8,249,229	8.72	26.21	7,275,337	7.69	11.31
Minnesota	2,879,789	7.68	2,831,379	7.55	-1.68	3,034,189	8.09	5.36
Mississippi *	5,129,224	8.73	4,584,051	7.80	-10.63	5,419,808	9.23	5.67
Missouri	4,707,304	8.08	4,986,595	8.56	5.93	4,951,585	8.50	5.19
Montana	681,330	7.72	677,007	7.67	-0.63	716,851	8.12	5.21
Nebraska	1,401,506	8.63	1,357,309	8.36	-3.15	1,473,788	9.07	5.16
Nevada	492,781	7.22	560,371	8.21	13.72	544,467	7.98	10.49
New Hampshire*	536,920	7.12	590,844	7.84	10.04	574,874	7.63	7.07
New Jersey	4,910,086	7.12	6,341,294	9.20	29.15	5,438,538	7.89	10.76
New Mexico	1,592,520	8.12	1,428,871	7.28	-10.28	1,700,724	8.67	6.79
New York *	16,079,107	6.99	22,266,519	9.69	38.48	17,848,898	7.76	11.01
N. Carolina	6,785,326	8.08	6,844,881	8.16	0.88	7,147,612	8.52	5.34
N. Dakota	686,472	8.96	549,178	7.17	-20.00	721,755	9.42	5.14
Ohio	7,599,636	6.98	9,794,803	8.99	28.89	8,385,661	7.70	10.34
Oklahoma	3,134,190	7.96	2,899,300	7.36	-7.49	3,297,089	8.37	5.20
Oregon	2,047,676	7.48	2,208,134	8.07	7.84	2,190,975	8.00	7.00
Pennsylvania	8,819,553	7.29	10,706,414	8.85	21.39	9,521,141	7.87	7.95
Rhode Island	710,956	7.57	902,307	9.60	26.91	748,096	7.96	5.22
S. Carolina	4,035,174	8.06	4,006,735	8.01	-0.70	4,252,319	8.50	5.38
S. Dakota	789,489	7.74	817,852	8.02	3.59	841,928	8.25	6.64
Tennessee *	5,738,748	7.79	5,985,416	8.13	4.30	6,064,112	8.23	5.67
Texas	14,687,008	7.15	14,783,618	7.20	0.66	16,003,660	7.79	8.96
Utah	987,842	6.80	1,066,561	7.34	7.97	1,108,304	7.63	12.19
Vermont *	489,670	8.29	443,569	7.51	-9.41	515,019	8.72	5.18
Virginia	4,737,550	7.75	4,462,063	7.30	-5.81	5,088,803	8.32	7.41
Washington	3,016,670	7.64	3,195,518	8.09	5.93	3,225,504	8.17	6.92
W. Virginia	2,560,537	8.92	2,358,086	8.22	-7.91	2,692,198	9.38	5.14
Wisconsin	3,060,934	7.69	3,529,552	8.87	15.31	3,220,564	8.10	5.22
Wyoming	335,426	9.61	268,341	7.69	-20.00	355,007	10.17	5.84
Micronesia	781,496	6.87	864,493	7.60	10.62	867,398	7.63	10.99
Puerto Rico	13,483,530	6.80	15,077,115	7.60	11.82	15,127,783	7.63	12.19
Virgin Islands	421,998	13.20	319,580	10.00	-24.27	443,097	13.86	5.00
Guam	160,383	9.68	128,306	7.74	-20.00	168,572	10.17	5.11
TOTAL	223,632,294	7.59	242,973,769	8.24		242,435,860	8.22	

Note: Amount of Basic Field Funding under the Corporation's request exceeds that allocated under H.R. 5712 (Senate).

* Does not include funding for former Delivery Systems Study projects.

FUNDING FOR FORMER DELIVERY SYSTEMS STUDY PROJECTS AND ANTIOCH SCHOOL OF LAW

		1984	1985
California	Charles Houston Bar Association	$ 129,604	$ 140,231
	Bet Tzedek Legal Services	90,685	98,121
	Bar Association of San Francisco	17,965	19,438
District of Columbia	Antioch School of Law/Urban Law Inst.	402,837	435,869
	NRTA/AARP Legal Counsel for Elderly	97,583	105,584
Massachusetts	Volunteer Lawyers Project-Boston Bar Assn.	145,081	156,977
Mississippi	Judicare of Mississippi	120,065	129,910
New Hampshire	New Hampshire Bar Association	80,296	86,880
New York	Legal Aid Society Volunteer Division	45,595	49,333
Tennessee	Legal Services of Middle Tennessee, Inc.	76,483	82,755
Vermont	Vermont Legal Aid, Inc.	108,533	117,433
		$1,314,727	$1,422,531

LSC PAPERWORK REQUIREMENTS

WOULD YOU SUPPLY FOR THE RECORD THOSE REPORTS YOU ARE REQUIRING FROM YOUR FIELD OFFICES THAT ARE SPECIFICALLY REQUIRED BECAUSE OF CONGRESSIONAL REQUESTS, THOSE WITHIN THE RIDER AND OTHERWISE?

AND SECONDLY, WOULD YOU SUPPLY FOR THE RECORD ANY NEW REPORTING REQUIREMENT THAT YOU HAVE REQUIRED IN THE LAST 18 MONTHS, AND JUST A DESCRIPTION OF WHAT THAT REQUIREMENT IS?

I am furnishing for the record a list of reports required from field programs. As you can see the number of recurring reports submitted from field programs is very short. We have added only one new requirement for recurring reports, a simple one dealing with representation in legislative and administrative rulemaking matters. The simple instructions for this form are attached at Attachment IV.

Based on our preliminary analysis it appears that 6 of the 8 new reporting requirements are the result of Congressional legislation. Over one-half, 63%, of the 8 new requirements relate solely to lobbying. These requirements should give rise to little paperwork since lobbying activity is largely prohibited by current appropriation law. Most of the newly revised regulations also originate from similar requirements or from opinions rendered by the General Accounting Office. The remainder, which cannot be directly correlated to specific Congressional language, are LSC management attempts to clarify or strengthen existing regulations.

Many of the complaints you may have heard about paperwork relate to the one-time requests for information which are also listed below. In number, and certainly in terms of time required, the overwhelming majority of those requests related to information requested by the Senate Labor and Human Resources Committee and the House Appropriations Committee to inform their decisions on LSC authorization and appropriation legislation. The fact that this information was not already in the possession of the LSC disclosed the inadequacy of information solicited in our annual grant application. It has led to changes which will better satisfy congressional information needs in the future while allowing program staff to anticipate and plan for the LSC information requirements. The number of one-time submissions, as per Attachment II, have declined to nil after the summer of 1983.

The other one-time information requests were necessary to plan training events and to determine how best to meet the support needs of LSC program staff. In the latter regard, the Corporation contracted with the National Opinion Research Corporation to interview randomly selected project directors, staff attorneys and paralegals about their support needs. The LSC requests noted on this list were simply requests for the names of field staff so that the survey firm could randomly select staff for confidential interviews.

Attachment I is a list of all recipient reporting requirements, showing those that are recurring and non-recurring and whether the requirements are new, revisions of procedures that existed prior to January 1, 1983, or unchanged from procedures that existed prior to January 1, 1983. References in brackets refer to authoritative sections of the LSC Act (1000 series), appropriations law (Public Law 97-377 and Public Law 98-166) the part of the LSC Regulations (1600 series), and/or the LSC Audit Guide, among other sources. Attachment II describes each of the reporting changes. A summary table of the data contained in Attachment I follows:

Reporting Requirements

	New	Revised	Existing	Total
Recurring	1	4	4	9
Non-recurring	5	1	15	21
Special	1	4	8	13
	7 (16.3%)	9 (20.9%)	27 (62.8%)	43 (100%)

ATTACHMENT 1

LSC Recipient Reporting Requirements

I. Recurring (Periodic) Reporting Requirements for All Recipients

A. New (subsequent to 1/1/83)

Implementation of Appropriations Provisions - Public Laws 97-377 and 98-166
1. Quarterly Legislative and Administrative Advocacy Report [1612.5(b)(6) and See Note 1]

B. Revised (subsequent to 1/1/83)

Implementation of LSC Act
1. Client Eligibility Guidelines (initial 1/30/84 - annually thereafter) [1007(a)(2), 1611.5 and .6]
2. Annual Review of Priorities (initial 6/30/84 - annually thereafter) [1007(a)(2)(c), 1620.5]
3. Annual Refunding Application [1006(b)(1)(a)]
4. Quarterly CSR Reports [1008(a), 1614, Grant Assurance No. 6]

C. Existing (prior to 1/1/83)

1. Annual Audit Report and Supplemental Letter [1009(c)(1), Grant Assurance No. 7, LSC Audit Guide]
2. Auditors' Confirmation Letter [1008(a), LSC Audit Guide]
3. Quarterly Financial Reports [1008(a), LSC Audit Guide]
4. Private Attorney Involvement Plan & Budget [1008(a), 1614.4(a),]

II. Non-recurring Submissions for All Recipients (including all revisions)

A. New (subsequent to 1/1/83)

Implementation of Appropriations Provisions - Public Laws 97-377 and 98-166
1. Verification Procedures - Lobbying and Other Restricted Activities [1612.5(g) and See Note 1]
2. Communication Guidelines - Lobbying and Other Restricted Activities [1612.7(d) and See Note 1]
3. Enforcement Procedures - Lobbying and Other Restricted Activities [1612.8 and See Note 1]
4. Verification of Alien Status Form [1008(a) and 1626]

Implementation of LSC Act
5. Retainer Agreement Form [1007(a)(2), 1611.8]

B. Revised (subsequent to 1/1/83)

Implementation of Appropriations Provisions - Public Laws 97-377 and 98-166
1. Board Compliance Plans and Extensions [1007(c), 1607.7]

NOTES: 1. References are made to the LSC Act 1007(a)(5) and (6), as well as GAO Opinion B-202116 dated 5/1/81 and GAO Opinion B-210338 dated 9/19/83.

LSC Recipient Reporting Requirements

C. Existing (prior to 1/1/83)

1. Appeals Procedures [1007(a)(7), 1605.3]
2. Attorney Hiring - Policies & Procedures [1007(a)(8), 1616]
3. Class Action Procedures [1006(d)(5), 1617]
4. Enforcement Procedures [1006(b)(2), 1618]
5. Disclosure of Information Procedures [1006(b)(1), 1619]
6. Board Membership/Names and Addresses [1006(b)(1), 1619.2]
7. Client Grievance Procedure [1006(b)(1), 1621]
8. Handicapped Accessibility Certificate [1008(a), 1624.5(c)]
9. Self Evaluation - Handicapped Policies [1008(a), 1624.7]
10. Articles of Incorporation [1008(a), Grant Assurance No. 2]
11. Affirmative Action Plan [1008(a), Grant Assurance No. 5]
12. Equal Opportunity Policy Statement [1008(a), Grant Assurance No. 5]
13. By-Laws [1008(a), Grant Assurance No. 8]
14. Board Structure Revisions [1007(c), Grant Assurance No. 8]
15. Client Eligibility Form [1007(a)(2), 1611.7(a)]

III. Special Submissions for Subject Recipients

A. New (subsequent to 1/1/83)

Section 607 of General Government Appropriations Act

1. Published Materials - Lobbying and Other Restricted Activities [1612.5(e)(3) and See Note 1]

B. Revised (subsequent to 1/1/83)

Implementation of LSC Act

1. Reporting Attorney Fees in LSC Fund [1007(b)(1), 1609.6]
2. Subgrants and any Modifications [1008(a), 1627, and See also GAO Opinion B-210338 dated 9/19/83]
3. Procedures Governing Recipients Fund Balances [1008(a), 1628, LSC Instruction 83-4, and See also GAO Report HRD 80-103 dated 8/28/80 and the related GAO Opinion B-199777 of the same date]
4. Questioned Costs Resolution [1008(a), Instruction 83-8, also the House Committee on Government Operations' report entitled "Failure of Federal Departments and Agencies to Collect Audit-Related Debts," dated 8/12/82, and the related GAO report to the Chairman, Legislation and National Security Subcommittee, entitled "Federal Agencies Negligent in Collecting Debts Arising from Audits."]

C. Existing (prior to 1/1/83)

1. Response to Violations/Complaints being investigated by State Advisory Council [1004(f), 1603.6]
2. Governing Body Waivers [1007(c), 1607.5]
3. Separate Reporting of Funds from Other Sources [1010(c), 1610.4]
4. Waiver Request - Use of Outside Funds [1010(c), 1610.5]
5. Grant Extensions & Revisions [1008(a), Grant Assurance No. 9]
6. Purchase/Lease of Certain Property - Real & Personal [1008(a), LSC Audit Guide, Property Management Manual, 5/16/79 Instruction]
7. Approval of Certain Consultant Contracts [1008(a), LSC Audit Guide]
8. Notice of Pending Qualified Auditors' Opinion [1008(a), LSC Audit Guide]

IV. Special Requirements

- A. One-time Grants
    1. Budget Submissions
    2. Interim Reporting
    3. Separate Audit
    4. Other

- B. Special Grant Conditions
    1. Separate Reporting of NA & Migrant Grant Funds
    2. Other

Attachment II

ONE-TIME RECIPIENT INFORMATION REQUESTS 1/1/83 to 6/30/84

	Date of Request	Description	Staff Inquiry	Congressional Inquiry	
#1	2/8/83 (83-10)	Severance Policies Implementation of Pub. L. 97-377 (Telephone Survey)	X	X	(Indirect)
#2	2/8/83 (83-10)	Attorney Fees Survey	X	X	(Indirect)
#3	2/24/83 (83-11) 3/17/83 (83-15)	Questions regarding program's open cases and clients who could not be served. Bogard prep for Appropriations Comm hearing.	X	X	(Indirect)
#4	3/1/83	Inquiry on workshop design for PAI training	X		
#5	3/25/83 (83-21)	Analysis of Service Priorities. Request from House Appropriations Comm.		X	(Direct)
#6	3/25/83 (83-21)	Description of each class action suit Request from House Appropriations Comm.		X	(Direct)
#7	4/5/83	Update Roster of current Board of Directors	X		
#8	5/3/83	Membership and Malpractice Insurance Coverage	X		
#9	5/4/83 (83-29)	Numerous questions Hatch Request - Committee on Labor and Human Resources		X	(Direct)
#10	5/4/83 (83-30) 6/15/83 (83-46)	Lists of Attorneys National and State Support Survey	X		
#11	5/4/83	Numerous questions related to Hatch request o legal fees o real property o fees and dues o lawsuits		X	(Direct)

ONE-TIME RECIPIENT INFORMATION REQUESTS 1/1/83 to 6/30/84

	Date of Request	Description	Staff Inquiry	Congressional Inquiry	
#12	5/12/83 (83-37)	List of paralegals National and State Support Survey	X		
#13	7/1/83 (83-54)	Hatch Request - Corrections to addresses Also complete list of subgrants	X	X	(Direct)
#14	8/24/83 (83-71)	Minority Attorney Involvement Plans (Clarification of Gen. Condition No. 5)		X	(Indirect)
#15	9/7/83	Request for comments on Law School Clinic Project	X		
#16	9/19/83 (83-84)	Eligibility Standards (Survey of 75 Programs)	X	X	(Indirect)
#17	9/26/83	Information on Local Client Councils	X		
#18	Summer 1983	National Opinion Research Corporation Survey of Support Needs of LS Staff	X		
#19	11/21/83 (83-107)	Data Collection Client Board Member Training	X		
#20	1/3/84	Survey-Alternative Dispute Resolution Mechanisms	X		

Attachment III

DESCRIPTION OF REPORTING CHANGES

I.A.1. Quarterly Legislative and Administrative Advocacy Report

Brief reporting form submitted by all recipients describing any lobbying activities. Attachment IV is the instructions for this form.

I.B.1. Client Eligibility Guidelines

Recipient must now submit written guidelines previously maintained as program record. Eligibility guidelines establish limits for income, assets, family size, etc., for clients which are eligible for service consistent with program priorities and LSC requirements.

I.B.2. Annual Review (of Priorities)

Recipient must document and submit to LSC a report describing its priorities, which previously was a only a requirement to prepare and maintain the report for public inspection. Some new elements were added to insure equal access throughout service areas.

I.B.3. Annual Refunding Application

Consistent with the LSC Act, LSC recipients submit annual applications for refunding. In addition to reporting on accomplishments of the preceding year and plans for the succeeding year, the refunding application serves as a fact-gathering tool for information about program operations. The applications are routinely updated and revised each year to best meet changing needs of the preparers and users. For example, since LSC contemplated grants to upgrade grantee computer capability in 1984, questions about technological improvement were included in the 1984 application.

I.B.4. Quarterly CSR Reports

Modified in 1984 to include separate report of Private Attorney Involvement case service statistics.

II.A.1. Verification Procedures

Recipients shall adopt and submit for LSC's approval procedures and forms to document that the legislative and administrative activities in which they engage using funds made available under the authority of Public Law 97-377 fall within the scope of permitted activities.

II.A.2. Communications Guidelines

Recipients shall submit for LSC's approval policy guidelines for the director of a recipient program to be used to determine when communications related to legislative and administrative activities are permissible.

II.A.3. Enforcement Procedures

Quarterly report now required of grantee investigation of complaints that its employees have violated any restrictions on legislative and administrative representation.

II.A.4. Verification of Alien Status Form

Recipient will submit for LSC's approval a form document which will be used to determine status of potential client if recipient has reason to question whether the individual may be an illegal alien not eligible for services.

II.A.5 Retainer Agreement Form

Recipient will submit for LSC approval a written form which shall clearly identify the relationship between the client and the recipient, the nature of the legal services to be provided, and the rights and responsibilities of the client. This document shall be executed when representation commences and shall become a part of the client's file. The form will not be completed when the only service to be provided is brief advice and consultation. This form did not previously require LSC approval and was only a recordkeeping requirement.

II.B.1. Board Compliance Plans and Extensions

Recipient will submit, as a part of its initial application for funding or by a date specified by LSC, its plans for the Board composition to meet with LSC criteria. The recipient may also request an extension date for good cause. Board composition is defined by the LSC Act and Pub. L. 97-377. Revisions by LSC relate to submission dates and criteria for appointing bodies as provided for in appropriations language.

III.A.1. Published Materials - Lobbying and Other Related Activities

Submission of a copy of any written material for publication, general distribution or mass communication that refers to pending or proposed legislation to LSC within 30 days after publication, distribution or mass communication. No increase in documentation requirements other than mailing items to LSC.

III.B.1. Reporting Attorney Fees in LSC Fund

Prior regulation discussed reporting attorney fees in a manner to be directed by the Corporation. This revision specifies that such fees which are received should be included in the LSC fund in the recipients' annual audit.

III.B.2. Subgrants and any Modifications

In the past, subgrants were generally described in the budget section of the annual refunding applications. Depending on the nature of the subgrant, programs submitted these contracts for approval to LSC. This regulation standardizes minimum reporting requirements for all subgrants.

III.B.3. Procedures Governing Recipients' Fund Balances

Recipients are required to submit waiver requests justifying retention of fund balances exceeding 10% of the annualized funding base for an amount not to exceed 25% of said base. Recipients will also submit a request to use funds for a succeeding year in which they incurred a fund deficit describing reasons therefor and measures to be adopted to preclude recurrence. The Audit Division Standard Operating Procedures previously addressed these problems in general terms; however, these procedures deal more fully with the issues.

III.B.4. Questioned Costs Resolution

These procedures formalize previously less formal methods for identification, investigation, and resolution of questioned costs. The recipient is required to provide evidence to resolve these expenditures and, if necessary, take such steps as are necessary to prevent a recurrence.

Attachment IV

LEGAL SERVICES CORPORATION

MEMORANDUM NO. 83-42

DATE: June 8, 1983

TO: Regional Directors

FROM: Gregg Hartley

RE: Instructions for Submission of Recipient Legislative and Administrative Quarterly Reports

In compliance with Section 1612.4(b)(5) of the Code of Federal Regulations for the Legal Services Corporation, recipient programs are hereby directed to submit quarterly reports describing their legislative and administrative advocacy activities conducted under the regulations. I have attached a copy of the revised regulation for your information and subsequent transmittal via directive to recipient programs.

The attached format is to be used in preparation of the recipient's quarterly submission. Please disseminate instructions to your programs that they are to submit quarterly reports outlining the aforementioned activities, following the attached format. These reports are to be submitted to their Regional Corporation Office, as well as to the Monitoring and Evaluation Unit of the Office of Field Services.

The attached format is intended to produce a brief, outlined report of all legislative and administrative activities from which information can be quickly collected. To achieve uniformity throughout the system, this format should be followed closely.

In order to avoid possible confusion, I will attempt to briefly explain what information is required to be included in the Quarterly Report.

1. The spaces for the grant number, program name and reporting period should be self explanatory.

2. The space for the Contact Person should be filled in with the name of that person who is either responsible for the overseeing of the program's legislative and administrative activities or that person who is designated by the program to act as the liaison between the program and the Regional Office regarding legislative and administrative activities.

The next part of the Quarterly Report is broken down into two major categories, Legislative and Administrative activities. Under these major headings, the appropriate activities and required data should be listed separately, in outline form, designated A, B, C, etc. The following information is requested:

1. Type of Activity -- This should be a brief descripton of the type of activity in which the progam has engaged. An example could be, "Testify before Senate Sub Committee on Housing Reform."

2. Under type of activity should follow the date, or dates (if more than one) upon which the described activity occured.

3. Date of (1) written request; (2) oral request; (3) retainer agreement; or (4) authorization by Executive Director -- Under Section 1612.4, there are four ways that legislative or administrative activity may be initiated. These ways are as follows: (1) the agency, legislative body, etc., may request the activity in writing; (2) the request may be made orally with written confirmation to follow; (30 the activity may be initiated to represent a client pursuant to a written retainer agreement signed by the client; or (4) if appropriate, the authorization may come from the program's Executive Director (This authorization must be in writing.). This procedure is clearly laid out in Section 1612.4 of the Regulations. The date requested here is the date the activity was requested.

4. Subject matter addressed/specific matter addressed — Under Legislative Activities, the specific bill to which the activity relates should be identified. Under Administrative Activity the specific rule, regulation or other matter should be identified.

Although this explanation has been somewhat lengthy, the Quarterly Report should be brief. The final report should result in a terse outline of activities. In this way, the required data will be provided with a minimum expenditure of time and effort.

The programs should direct any questions they may have regarding this quarterly report to your offices. Any questions you may have should be directed to Terry Duga, Director of Liaison, Grants Management and Legal Analysis.

Thank you for your attention to this matter.

GLH/nc

Attachments

cc: Alan Swendiman
    Terry Duga

LEGISLATIVE AND ADMINISTRATIVE
QUARTERLY REPORT
(FORMAT)

GRANT NUMBER: ____________________

PROGRAM NAME: ____

REPORTING PERIOD: FROM: ____________ TO: ____________________

CONTACT PERSON: ____

I. LEGISLATIVE ACTIVITIES

A. Type of Activity (Description)

1. Date(s) of Activity

2. Date of (1) written request; (2) oral request; (3) retainer agreement; or (4) authorization by Executive Director. (Please attach copy of appropriate document.

3. Subject matter addressed.

Each legislative activity is to be listed separately. Information for A 1 through 3 listed above should be provided for each activity.

II. ADMINISTRATIVE ACTIVITIES

A. Type of Activity (Description)

1. Date(s) of Activity

2. Date of (1) written request; (2) oral request; (3) retainer agreement; or (4) authorization by Executive Director.

3. Specific matter addressed.

Each administrative activity is to be listed separately. Information for A 1 through 3 listed above should be provided for each activity.

LEGISLATIVE AND ADMINISTRATIVE

QUARTERLY REPORT

GRANT NUMBER: 5 2 6 0 2 0

PROGRAM NAME: Legal Services of Eastern Missouri, Inc.

REPORTING PERIOD: From: Jan. 1, 1984 To: March 30, 1984

CONTACT PERSON: Richard B. Teitelman, Executive Director

I. LEGISLATIVE ACTIVITIES

A. Activity: Provided testimony to the Human Resources Committee of the Missouri State Senate.

1. Date of activity: February 14, 1984.
2. Date of request: February 8, 1984 (letter from Senator J.B. "Jet" Banks is attached).
3. Subject matter discussed:

   Testimony was provided on Senate Bill 616 which concerns the enactment of legislation to outlaw discrimination in housing because of age or familial status.

II. ADMINISTRATIVE ACTIVITIES

There were no administrative activities during this quarter.

DATE SUBMITTED: April 23, 1984

MISSOURI SENATE
JEFFERSON CITY

Committees:
Public Health, Mental Health, Welfare, Medicaid and
Consumer Protection, Chairman
Municipal Corporations, Railroads, Private Corporations,
Housing and Urban Affairs, Vice Chairman
Appropriations, Vice Chairman
Apportionment, Elections, Military and Veterans Affairs,
Vice Chairman
Banks, Banking, and Financial Institutions
State Fiscal Affairs
Gubernatorial Appointments

February 8, 1984

Ms. Sandra Farrgut Hemphill
Legal Services of Missouri
625 N. Euclid Ave.
St. Louis, MO 63108

Dear Ms. Hemphill:

Enclosed please find for your imput and review Senate Bill 616, which you have some expertise on.

Your testimony on this matter would be highly appreciated and may be the deciding factor to persuade the committee. If for some reason you will not be able to attend the hearing on this bill, and have someone who can, please call my Jefferson City office at 751-4650, and let my secretary know who will be coming.

If it would not be an inconvenience to you, could you please provide a written testimony for committee records and also my records.

Senate Bill 616, will be heard by the Human Resources Committee, on February 14, 1984, at 9:00 a.m., in Hearing Room 332, at the Capitol Building here in Jefferson City.

Thanking you in advance, and looking forward to seeing you February 14th. If you wish to come to Jefferson City earlier than 9, please feel free to do so and stop by my office.

Sincerely,

J. B. "Jet" Banks

J. B. "Jet" Banks
Assistant Majority Floor Leader
5th Senatorial District

ehb

Enclosure

"THE WELFARE OF THE PEOPLE SHALL BE THE SUPREME LAW"

PUBLIC COMMENT ON POLICY

The Legal Services Corporation Act requires that regulations be published with a 30-day public comment period. In the case of regulations (either new or proposed revisions) promulgated this year, all have been published for comment, and the comments have been considered. Of the twelve regulations adopted, all have been modified to a greater or lesser extent on the basis of public comment received except for the technical changes to the termination regulation which only received one comment.

The LSC Act does not require that comments be solicited on instructions published to implement the Act and regulations. In 1983, LSC followed the example of its prior management in utilizing instructions to elucidate and implement policy on various matters, such as private attorney involvement. In November, 1983, LSC published Instruction 83-9 - Grant Conditions for National and State Support, which had the purpose of providing notice and direction to national and state support center recipients regarding contract and grant conditions. While it made requirements as to how the grants should be spent, it was intended primarily as an aid to national and state support centers in compliance with the applicable sections of the Act and regulations. That Instruction was the first time that support centers had been provided advance notice of their grant conditions.

In addition to the record of the Corporation for considering and modifying regulations based upon comments received during the 30-day comment period following publication of proposed regulations in the Federal Register, the Corporation has also, in a number of instances, taken action to receive public comment or acted upon public comment even though not required to do so. Some examples:

1. The Corporation had in place an instruction (83-4) designated "Instruction on Recipient Fund Balances." The publication process for Instructions of the Corporation requires only a 30-day notice before the effective date of the Instruction.

However, the Corporation re-published the fund balance instruction, with some modifications as a proposed rule for public comment. Based upon comments received, the proposed rule was then modified further before final publication.

2. The same situation applied to the Corporation's Instruction 83-6, "Instruction on Private Attorney Involvement." In 1981, the Board, by instruction, required 10 percent of the annualized grant amount be dedicated to private attorney involvement in the delivery of legal assistance to eligible clients. It later raised that figure to 12.5 percent. Though published as an instruction, this matter received considerable informal comment. Upon consideration, the Corporation determined to re-publish the subject as a regulation. The proposed rule was substantially different from the instruction, based upon earlier informal comment from the field and bar associations, and before final publication was amended further in light of formal comments received.

3. The Corporation's Instruction 83-10, dealing with procedures for the establishment of grievance or complaint mechanisms by local programs, was published in December 1983. In the early months of 1984 the Corporation received a number of comments which indicated that the instruction contained an unforseen and unintented consequence which would have been detrimental to the local programs. Based upon these comments, the Corporation withdrew the instruction in April.

4. The Legal Services Corporation Act, as amended, does not require that by-laws of the Corporation, or amendments thereto, be published with opportunity for public comment. Even so, the Corporation provided such an opportunity, and certain modifications were made on the basis of such comment.

Q: HOW MANY OF YOUR TOP PEOPLE, YOU CONSIDER THE TOP 15 OR 20 POLICY-MAKING POSITIONS AND ADMINISTRATIVE POSITIONS IN THE CORPORATION AT THIS TIME HAS PRIOR EXPERIENCE WITH LEGAL SERVICES?

STAFF EXPERIENCE

Well over half of my top staff have considerable experience with the Legal Services Corporation and legal services delivery to the poor. All of my top staff have solid credentials in their professional fields.

The two positions in the Corporation with principal responsibility for oversight of legal services delivery are those of the Director of Field Services and the Director of Program Development. The Office of Field Services is responsible for the oversight of our ongoing delivery program, while the Office of Program Development is responsible for research and development of new and improved delivery methods.

The Director of Field Services is Gene Potack. Mr. Potack was a staff attorney for Wisconsin Judicare from 1976-77; staff attorney for Wisconsin Indian Legal Services from 1977-78; and Executive Director of Wisconsin Judicare from 1978-83. He joined the Corporation staff in 1983.

The Director of Program Development is Peter Broccoletti. Mr. Broccoletti was the first director and managing attorney of Tidewater (Virginia) Legal Aid, 1967-68; a staff attorney with Broward County (Florida) Legal Services, 1976; supervising attorney for the Notre Dame (Indiana) Legal Aid and Public Defender Association 1976-78; and managing attorney of the Key Largo office of Legal Services of the Florida Keys 1978-79. He joined the Corporation staff in March 1983.

Most of the other top staff in the Office of Field Services have many years of legal services experience to draw upon. Britt Clapham, Manager of the Native American Unit, has been with the Legal Services Corporation for over three years. Prior to that he was law clerk at the Indian Law Support Center (1.5 years); a Reginald Heber Smith Fellow with California Indian Legal Services (2 years); and managing attorney with Legal Aid of Western Oklahoma (2 years, 5 months). The Manager of the Grants and Budget Unit of the Office of Field Services, Gail Francis, has served in the Corporation since 1977 starting in the Audit Division and moving to her present position in 1979. Mr. Potack's special assistant, Barney Hamlin, served as Deputy Director of Field Services (3 years) under its first director, Charles Jones, as Project director at Camden Regional Legal Services (2 years) and a staff attorney with Cleveland Legal Aid Society (3 years). The Acting Manager of the Monitoring and Evaluation Unit, Paul Reddick, has 3 years experience in our Atlanta Regional Office and Grants and Budget Unit.

The Acting Training Coordinator, Maria Valdes, has been with the Corporation for almost five years, starting in the Office of Program Support. The Coordinator of Technical Assistance, Patricia Paquette, has been employed by the Legal Services Corporation 5 years and prior to that worked for 13 years with Connecticut Legal Services in personnel and grants administration. Joshua Brooks, who served as Deputy Director of Field Services and who is now Acting Director of our Philadelphia Regional Office, previously served as a staff attorney at Community Action for Legal Services (New York) and was a Reginald Heber Smith Fellow at the San Francisco Neighborhood Legal Assistance Foundation.

Jacquelyn Mitchell, whom I appointed Director of our Atlanta Regional Office, was a Reginald Heber Smith Fellow and served as Special Assistant to LSC's first President, Thomas Ehrlich, prior to her appointment in 1979 as Deputy Director of the Atlanta Regional Office. Miss Mitchell is the first minority female to serve as director of a Legal Services Corporation regional office and she heads the largest such office which involves grantees which receive almost one-fourth of our funds.

The other offices of the Corporation are headed by individuals with extensive experience either with the Corporation or in their professional fields. My Vice President of Operations, Dennis Daugherty, had eight years of prior experience in the field of governmental policy development as a congressional and gubernatorial aide and has been at the Legal Services Corporation for over two years. Serving as Acting Comptroller is Charles White who has been with the Legal Services Corporation for 7 1/2 years. Our General Counsel, Alan Swendiman, has practiced law the District of Columbia for 11 years, during which time he has regularly undertaken pro bono matters. He has represented the Corporation in various capacities for the past two and a half years. The Corporate Secretary and Assistant to the President, LeaAnne Bernstein, who has worked for the Corporation since March 1982, has clerked for judges of both a state court of appeals (2 years) and supreme court (1 year), worked as a part-time staff attorney for a state welfare department (4 months) and served as a legal research analyst and editor with a state-funded support entity for trial judges (1 year). My Director of Personnel, Robert Fuller, has served the Corporation for six years, while the Director of the Audit Division, Daniel Nusbaum, is a C.P.A., who has been with the Audit division for almost four years.

Tom Opsut, who holds the very sensitive position of Director of Compliance and Review, has 6 years of experience with bar disciplinary commissions. My Director of Government Relations, Jim Streeter, worked on Capitol Hill for ten years, serving ultimately as Administrative Assistant to Senator McClure. The Director of the Office of Information Management Bernard Frey, has 32 years experience in the field of data processing. Robert Washington, who directs our Office of Equal Opportunity, has 14 years experience in the Equal Employment Opportunity field. The Acting Director of our Office of Administration, Alberto Lopez-Silvero, a C.P.A. has 12 years experience in office management, accounting and personnel administration.

Q: THE BUDGET SUBMISSION FOR FISCAL YEAR 1985 STATES THAT THE ACTUAL CARRYOVER WAS $5.7 MILLION. WOULD YOU TELL US EXACTLY HOW THIS MONEY IS BEING USED, AND PLEASE BE SPECIFIC?

WHY HASN'T THE CORPORATION NOTIFIED THE HOUSE AND SENATE APPROPRIATIONS COMMITTEE OF THE PROPOSED USE OF THESE FUNDS IN LIGHT OF SECTION 509 OF THE 1984 ACT WHICH IS IDENTICAL TO PRIOR YEAR LANGUAGE RELATING TO REPROGRAMMINGS?

Section 509 of the FY 1984 Appropriations Act applies to the Legal Services Corporation if it undertakes any of the activities detailed in that Section with 1984 funds. Clearly, that 1984 statutory restriction does not apply to funds appropriated for FY 1983, and there were no similar provisions in the FY 1983 continuing resolution, although the following language was in the House Committee Report:

> The Committee desires and expects that the Chairman of the Subcommittee on the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies be notified in writing a minimum of 15 days prior to --
>
> (1) Reprogramming of funds, whether permanent or temporary, in excess of $250,000 or 10 percent, whichever is less, between programs or activities. This provision is also applicable in cases where several activities are involved with each receiving less than $250,000. In addition, the Committee desires to be notified of reprogramming actions which are less than these amounts if such actions would have the effect of committing the agency to significant funding requirements in future years.
>
> (2) Increasing funds or personnel by any means for any project or activity for which funds have been denied or restricted.
>
> (3) Creation of new programs or substantial augmentation of existing programs.
>
> (4) Relocation of offices or employees.
>
> (5) Reorganization of office, programs, or activities.
>
> The Committee also expects that any items which are subject to interpretation will be reported.

Thus, even though not required by law, the Committees could have been notified regarding FY 1983 funds if any of the above-quoted points were present.

The Corporation's fiscal year 1983 fund balance of $5,702,499 was allocated in its entirety to programs in fiscal year 1984. As you know, the Corporation receives its appropriation in annual installments at the time of the appropriation and the funds so appropriated are not subject to rescission or return to the Treasury if not expended. We therefore understand that for purposes of your reprogramming rules the relevant inquiry is whether FY '83 funds are proposed for expenditure for a purpose different from that for which they were originally provided in FY '83. Of this amount, $1,217,413 were transferred from one activity, i.e., the Support for the Provision of Legal Assistance, our administrative overhead budget, to a second activity, i.e., the Provision of Legal Assistance, our program and grant budget. The following chart shows how that transfer was made:

LEGAL SERVICES CORPORATION
REPORT ON REPROGRAMMINGS
FISCAL YEAR 1983 CARRYOVER FUNDS

BUDGET ACTIVITY	FY 1983 BUDGET (a)	FY 1983 FUNDS CARRIED OVER	ALLOCATION OF FY 1983 CARRYOVER	REPROGRAMMING	% CHANGE IN APPLICATION OF FY 1983 BUDGET
I. PROVISION OF LEGAL ASSISTANCE					
A. Field Programs	$210,932,339	$834,702	$677,160	($157,542)	-0.07%
B. National and State Support	13,084,927	0	0	0	0.00%
C. Special Programs	4,733,699	0	0	0	0.00%
D. Program Maintenance and Improvement	686,000	113,320	729,108	615,788	89.77%
E. Delivery Research and Experimentation (b)	3,356,220	2,861,228	2,995,500	134,272	4.00%
F. Regional Training Centers	0	0	678,895	678,895	(c)
SUBTOTAL	$232,793,185	$3,809,250	$5,080,663	$1,271,413	0.55%
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE					
A. Office of Field Services	5,247,720	1,024,212	195,000	(829,212)	-15.80%
B. Management and Administration	4,989,672	560,620	426,836	(133,784)	-2.68%
C. Unallocated	150,000	150,000	0	(150,000)	-100.00%
Adjustments (d)		158,417		(158,417)	
SUBTOTAL	$10,387,392	$1,893,249	$621,836	($1,271,413)	-12.24%
TOTAL	$243,180,577	$5,702,499	$5,702,499	$0	

(a) FY 1983 Budget approved by Board of Directors includes carryover funds of $2,120,577.

(b) Now identified as "Program Development and Experimentation".

(c) New budget item created entirely from FY 1983 carryover.

(d) Adjustments include: over-accrual of prior-year expenses ($85,326); fund balance recoveries ($7,435); donated services ($63,291); and miscellaneous income ($2,365).

An Examination of the five categories listed above shows that numbers two through five are not applicable to any of the Corporation's 1983 carryover. There was, however, a transfer in excess of $250,000 from one activity to another, and the Committee could have expected notice of that fact.

This reprogramming of overhead funds to the program portion of our budget was made possible by cost savings throughout the year, primarily through lapses in filling vacant positions and associated reduced levels of travel and day to day administrative expenses.

The two principal beneficiary programs were "Program Maintenance and Improvement" and "Regional Training Centers". The additional funds allocated to "Program Maintenance and Improvement" are being used in fiscal year 1984 to continue training efforts, promote technological improvements in field programs, to meet unanticipated grant requirements, and to assist field programs in overcoming unanticipated problems. The establishment of the "Regional Training Centers" item is a result of judicial direction pursuant to Massachusetts Law Reform Institute v. L.S.C., 581 F. Supp. 1179 (D.D.C. 1984).

PUBLIC COMMENT ON POLICY

The Legal Services Corporation Act requires that regulations be published with a 30-day public comment period. In the case of regulations (either new or proposed revisions) promulgated this year, all have been published for comment, and the comments have been considered. Of the twelve regulations adopted, all have been modified to a greater or lesser extent on the basis of public comment received except for the technical changes to the termination regulation which only received one comment.

The LSC Act does not require that comments be solicited on instructions published to implement the Act and regulations. In 1983, LSC followed the example of its prior management in utilizing instructions to elucidate and implement policy on various matters, such as private attorney involvement. In November, 1983, LSC published Instruction 83-9 - Grant Conditions for National and State Support, which had the purpose of providing notice and direction to national and state support center recipients regarding contract and grant conditions. While it made requirements as to how the grants should be spent, it was intended primarily as an aid to national and state support centers in compliance with the applicable sections of the Act and regulations. That Instruction was the first time that support centers had been provided advance notice of their grant conditions.

In addition to the record of the Corporation for considering and modifying regulations based upon comments received during the 30-day comment period following publication of proposed regulations in the Federal Register, the Corporation has also, in a number of instances, taken action to receive public comment or acted upon public comment even though not required to do so. Some examples:

1. The Corporation had in place an instruction (83-4) designated "Instruction on Recipient Fund Balances." The publication process for Instructions of the Corporation requires only a

30-day notice before the effective date of the Instruction. However, the Corporation re-published the fund balance instruction, with some modifications as a proposed rule for public comment. Based upon comments received, the proposed rule was then modified further before final publication.

2. The same situation applied to the Corporation's Instruction 83-6, "Instruction on Private Attorney Involvement." In 1981, the Board, by instruction, required 10 percent of the annualized grant amount be dedicated to private attorney involvement in the delivery of legal assistance to eligible clients. It later raised that figure to 12.5 percent. Though published as an instruction, this matter received considerable informal comment. Upon consideration, the Corporation determined to re-publish the subject as a regulation. The proposed rule was substantially different from the instruction, based upon earlier informal comment from the field and bar associations, and before final publication was amended further in light of formal comments received.

3. The Corporation's Instruction 83-10, dealing with procedures for the establishment of grievance or complaint mechanisms by local programs, was published in December 1983. In the early months of 1984 the Corporation received a number of comments which indicated that the instruction contained an unforseen and unintented consequence which would have been detrimental to the local programs. Based upon these comments, the Corporation withdrew the instruction in April.

4. The Legal Services Corporation Act, as amended, does not require that by-laws of the Corporation, or amendments

thereto, be published with opportunity for public comment. Even so, the Corporation provided such an opportunity, and certain modifications were made on the basis of such comment.

LOBBYING -- COORDINATED EFFORT

The prohibitions are intended to prevent programs from becoming involved in a coordinated effort (clearly prohibited by the intent of Congress as expressed in the FY 1984 Appropriation bill) while calling the participation by another name.

An employee may be expected to know about the individual's role in such efforts through newspaper and other periodical articles or notes, conversations with others in the legal services field, and through direct inquiry of possible consultants. Given the very limited scope of permissible communication on legislative matters permitted under Pub. L. 98-166, it is our judgment that the employee should have sufficient resources in the bar and in congressional offices to prepare an effective communication without consulting those actively engaged in lobbying efforts.

The prohibitions are intended to prevent programs from becoming involved in a coordinated effort (clearly prohibited by the intent of Congress as expressed in the FY 1984 Appropriation bill) while calling the participation by another name.

An employee may be expected to know about the individual's role in such efforts through newspaper and other periodical articles or notes, conversations with others in the legal services field, and through direct inquiry of possible consultants. Given the very limited scope of permissible communication on legislative matters permitted under Pub. L. 98-166, it is our judgment that the employee should have sufficient resources in the bar and in congressional offices to prepare an effective communication without consulting those actively engaged in lobbying efforts.

QUESTION: What percentage of those actually seeking legal assistance are being served? How are the legal needs of those not being served being met or are they not being met?

ANSWER: Reliable data on the extent to which LSC recipients are able to meet the need for legal service does not exist since most of the local programs do not maintain those statistics. Efforts by LSC staff to obtain that information from the programs last year in preparation for the hearings were assailed by most of those contacted as another reporting requirement burden being imposed by the Corporation. In addition, because each local program has great latitude in determining eligibility standards and program priorities, nation-wide statistics are meaningless. Some programs deliver a high volume of commonly requested services while others emphasize political impact cases. The Corporation is trying to meet some of the needs of those who are not or cannot be served by our grantees through the priority setting regulations, through development of private law clinic and other delivery models, and through the Corporation's involvement in the development of new funding sources through such efforts as Interest On Lawyers' Trust Accounts (IOLTA).

Q: HAVE NON-LSC FUNDED PRIVATE BAR EFFORTS TO SERVE THE POOR INCREASED OR DECREASED IN RECENT YEARS, AND BY HOW MUCH?

A: The Legal Services Corporation does not have the information necessary to answer this question. Many private bar projects receive some funding from field programs through the 12 1/2 percent private attorney involvement requirement. It is clear that private bar efforts to serve the poor have increased in recent years. According to the American Bar Association, "private bar involvement is growing rapidly. State bars, local bars, minority bars and women's bars are all expanding programs for the poor. Even rural bars with as few as 10 members now have active programs."1/ For example, "in just the last two years the number of organized *pro bono* programs has jumped 500 percent--from fewer that (sic) 50 programs to more than 300."2/ However, to determine whether these programs are non-LSC funded, the Legal Services Corporation would have to conduct a study of every private bar project.

Twenty-seven states have Interest on Lawyer Trust Account programs. The organization of these IOLTA programs has in some cases been aided through LSC seed money. But, the voluntary participation by private attorneys has been significant and is growing. Most of these IOLTA projects have committed a substantial portion of the proceeds to the delivery of legal services to eligible clients.

Further evidence of private bar efforts to serve the poor is shown in the increasing number of public interest law firms.3/ While not all of these public interest firms restrict their representation to LSC-eligible clients, some of the benefits of the private bar efforts in this area may inure to those persons LSC serves.

1. Remarks by Wallace D. Riley, President, American Bar Association, Second Annual Pro Bono Conference, Anaheim, California, January 19, 1984, page 11.
2. Id., page 2.
3. "Pro Bono Publico", Wall Street Journal, March 30, 1984

QUESTION: What is the current mix of cases being handled by the various LSC programs? Has it changed over the last couple of years, and if so how?

ANSWER: The 1984 LSC Fact Book -- the current compendium of LSC recipient data -- provides the attached breakdown on the case types and methods of closure, with comparisons for 1980 through 1983. For the most part, any changes have been, plus or minus, within two percentage points. It is significant to note, however, that in many key categories the number of cases closed in 1983 with funding of $241 million rivals or exceeds the number closed for calendar year 1981 when LSC was at its peak funding of $321 million. More startling is the fact that in 1983, the local programs closed more cases than ever before in the history of the Corporation, exceeding even 1981 by nearly 30,000 cases. It appears that LSC grantees were therefore operating in a considerably more efficient manner in terms of direct delivery of service in 1983 at a significantly reduced funding level.

CHARACTERISTICS OF CASES CLOSED
CALENDAR YEARS 1980, 1981, 1982 and 1983

LEGAL PROBLEMS	1980		1981		1982		1983		1982-83
	Number	%	Number	%	Number	%	Number	%	Change
Family	339,299	29.7	362,423	29.1	315,339	27.5	362,320	28.4	46,981
Housing	197,115	17.2	227,775	18.3	221,137	19.3	233,862	18.4	12,725
Income Maintenance	198,098	17.3	227,454	18.3	220,962	19.3	246,993	19.4	26,031
Consumer/Finance	151,026	13.2	169,410	13.6	160,339	14.0	167,817	13.2	7,478
Individual Rights	36,508	3.2	36,244	2.9	30,527	2.6	31,199	2.4	672
Employment	34,324	3.0	35,288	2.8	32,734	2.8	38,129	3.0	5,395
Health	22,847	2.0	27,940	2.2	26,882	2.3	29,344	2.3	2,462
Juvenile	13,750	1.2	13,528	1.1	13,868	1.2	15,400	1.2	1,532
Education	5,547	0.5	7,346	0.6	13,364	1.2	16,482	1.3	3,118
Other	145,545	12.7	137,818	11.1	112,069	9.8	132,772	10.4	20,703
TOTAL ALL CASES CLOSED	1,144,059	100.0	1,245,226	100.0	1,147,221	100.0	1,274,318	100.0	127,097
REASON FOR CLOSURE									
Court Decision	129,307	11.3	133,724	10.7	102,537	8.9	107,889	8.5	5,352
Administrative Agency Decision	63,031	5.5	73,485	5.9	61,241	5.3	69,558	5.5	8,317
Negotiated Settlement With Litigation	45,409	4.0	48,814	3.9	36,474	3.2	37,769	3.0	1,295
Negotiated Settlement Without Litigation	83,838	7.3	74,218	6.0	54,747	4.8	55,156	4.3	409
Other	40,398	3.5	46,831	3.8	44,889	3.9	51,031	4.0	6,142
Brief Service	155,735	13.6	193,117	15.5	189,873	16.6	233,392	18.3	43,519
Referred After Legal Assessment	90,004	7.9	96,399	7.7	108,013	9.4	116,134	9.1	8,121
Client Withdrew or Did Not Return	126,756	11.1	134,212	10.8	101,829	8.9	115,747	9.1	13,918
Insufficient Merit to Proceed	33,765	2.9	35,941	2.9	29,090	2.5	34,895	2.7	5,805
Advice	367,168	32.1	399,477	32.1	412,114	35.9	445,997	35.0	33,883
Change In Eligibility Status	8,648	0.8	9,008	0.7	6,414	0.6	6,750	0.5	336
TOTAL ALL REASONS	1,144,059	100.0	1,245,226	100.0	1,147,221	100.0	1,274,318	100.0	127,097

Q: Have there been any changes in the experience levels of the attorneys working for the various programs? If so, to what do you attribute the changes?

A: The 1984 Fact Book of the Legal Services Corporation at page 23 details the fact that the average experience levels of attorneys in LSC-funded programs have increased steadily since 1978. In 1978 a staff attorney was likely to have had only 2 1/2 years of experience. In fact, Charles Dorsey of Baltimore Legal Aid testified before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice that one-third of the staff turns over every year. Melville D. Miller, then Chairman of the PAG Legislative Committee, testified that in one state, not an exception, 85% of the attorneys with three years' experience left their programs over a three-year period.

But, by 1983, an average staff attorney had more than 4 years of experience. A managing or supervising attorney in 1978 had worked 5 years and in 1983 had 7 1/2 years of experience. The program director in 1978 had 8 years of experience; in 1983 a person in that position would have had 10 years of experience.

These increases in experience levels relate partially to the growth of legal services programs and their consequent ability to pay better salaries. In addition, in 1982 when program allocations were decreased by 25%, programs were encouraged to retain "core staffs" who were likely to be the more experienced and higher paid attorneys even when this meant that there would be fewer total attorneys to serve clients.

The amount of experience of staff attorneys does not tell the whole story. In addition to the steadily increasing level of experience in staff programs, the increased involvement of private attorneys has provided even more experienced lawyers ready to serve eligible clients. For instance, as detailed on page 24 of the LSC Fact Book, more than 37% of all Judicare attorneys have been out of law school at least 10 years. Only 16% of staff attorneys have been practicing that long.

Not only have they been practicing longer, nearly 60% of Judicare attorneys have served indigent clients for six years or longer. This compares with the 40% of the staff attorneys who have experience with poor persons. Furthermore, 75% of the Judicare attorneys spend most of their time on work at which they are already proficient whereas only 59% of the staff attorneys made that claim.

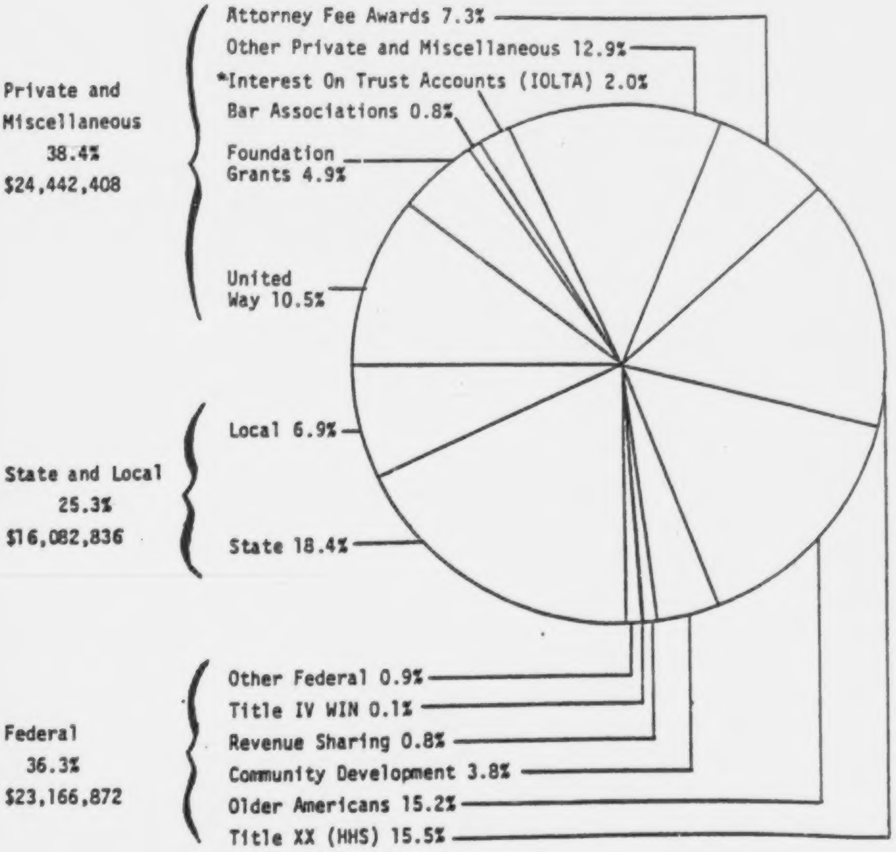
When asked by NORC why they choose to represent eligible clients, 64% of the Judicare attorneys responded that they wished to fulfill professional ethical responsibilities or for other community service or humanitarian reasons. This attitude of service is a further reason why the experience level has increased.

QUESTION: How much did the Corporation or its grantees receive in non-Federal funds last year? How much do you expect to get this year and next year?

ANSWER: According to data compiled from grant applications of LSC's recipient field programs, LSC grantees expected to receive $51,956,051 in 1983 and expect to receive $63,693,116 in 1984. The Corporation cannot provide accurate figures for future years, since the data for each year is available only from incoming grant applications. However, LSC expects the percentages of non-LSC funds available to recipient programs to increase dramatically as the number of states which enact Interest On Lawyers' Trust Accounts programs grows. At last count, 27 states have adopted IOLTA programs. These efforts to provide additional funding through IOLTA are being accomplished with the active assistance of the Legal Services Corporation through developmental and implementation grants and support to the National IOLTA Clearinghouse which is funded by LSC.

ESTIMATED DISTRIBUTION OF NON-CORPORATION FUNDS
TO BE RECEIVED BY LSC GRANTEES
IN 1984 BY SOURCE

TOTAL $63,693,116



*Twenty-one states have announced IOLTA programs but only three were distributin
funds to LSC grantees when this data was submitted. The actual amount that wil
be received in 1984 is expected to be significantly larger but is not yet knowr

Q: THE LSC RECENTLY REVISED ITS GRANT CONDITIONS FOR LOCAL PROGRAMS TO RAISE THE AMOUNT OF EACH GRANT REQUIRED TO BE SPENT ON PRIVATE BAR ACTIVITIES FROM 10 PERCENT TO 12.5 PERCENT. IS IT TRUE THAT THIS CHANGE IS OPPOSED BY MOST BAR ASOCIATIONS WHICH HAVE COMMENTED ON IT? WHY WAS THE CHANGE MADE?

HAS THE CORPORATION DONE ANY EVALUATIONS COMPARING THE EFFICIENCY AND EFFECTIVENESS OF THESE SET ASIDE FUNDS AS OPPOSED TO THE EFFICIENCY AND EFFECTIVENESS OF THE PROGRAMS' IN-HOUSE WORK?

PRIVATE ATTORNEY INVOLVEMENT IN LOCAL PROGRAMS

When the Legal Services Corporation Board of Directors initiated the private attorney involvement policy in 1981, there were comments from bar leaders that 10% was not enough and comments from staff program personnel that it was too much. Reese Smith, President of the ABA, wrote Senator Denton in 1981 advocating that a substantial allocation of the Corporation's funding be used to supplement existing programs (see attachment A). Mr. Smith addressed the Legal Services Corporation Board of Directors in St. Louis, Missouri on November 21, 1983, when the Board was considering a 15% requirement and urged the Board to adopt the 12 1/2% level "in order that we can gain experience as we proceed."

When the Private Attorney Involvement regulation was published for comment, 22 bar associations or committees or subcommittees thereof responded. All but two expressed support for the notion of private attorney involvement in legal services. Those two associations noted a philosophical devotion to the staff attorney model. One bar association expressed an outright approval of the percentage increase. The other comments expressed concerns that (1) flexibility would not be maintained (this flexibility is, in fact, included in the final regulation through a waiver provision); (2) pro bono activity would decrease if compensated models were introduced (in Wisconsin, where Judicare is most firmly established, pro bono participation in Eau Claire County exceeds fifty per cent of the bar and is approximately twenty per cent in the remaining 32 counties--twice the national average); (3) time reporting requirements for support staff was too cumbersome (this was changed in the final regulation); (4) private attorney reporting requirements were too extensive (the interim billing requirement was removed in the final regulation); and (5) the increase would divert funds from staff-model recipients (the 2 1/2% is only a portion of the minimum 5% increase every program received, therefor no program suffered by the allocation supplementing the basic delivery model). Therefore, the statement that the change was opposed by most bar associations commenting on it is not accurate. The concerns that were raised were addressed in the final regulation per the normal regulatory process.

The change from 10% to 12 1/2% was made in a continued compliance with the LSC Act requirement that alternative delivery mechanisms be explored and implemented where appropriate. The policy supports the continuance of the improved communications and relations between the programs and private attorneys evidenced since the 10% requirement was adopted. The Delivery Systems Study requested by Congress in 1974 and finally delivered to Congress in 1980 concluded that mixed delivery models were the most promising for the benefit of clients. Because an individual recipient, granted funds to deliver services in a given geographical area, may serve rural and urban and suburban clients, the recipient must be open to various delivery mechanisms. Yet, prior to the 1981 10% requirement (and in spite of the DSS findings), far less than 5% of program dollars, including the DSS-funded models, utilized other than a staff approach. Less than 2% of the funds were allocated to compensated models.

The Corporation's reasons for pushing for further progress in utilizing the expertise of the approximately 622,000 private attorneys relate in part to facts. The Corporation's funding increased from $71 million in 1974 to as much as $321 million in 1981. Yet cases handled each year did not make the same 4-fold jump; the number continued to hover at just over 1 million. During the same period of time, due to increased efficiences and advertising in the private sector, costs for routine legal servces for the middle and lower income clients fell because of such delivery modes as legal clinics.

The Legal Services Corporation Delivery Systems Study report to Congress in 1980 found:

> All of the private attorney models demonstrated their ability to provide needed legal services to poor persons.
>
> The five private attorney models tested met the quality of services standard set by the staff attorney program.
>
> No private attorney model tested in the study failed to meet the performance standard on cost set by the staff attorney program. Because wider variation was found from project to project within the models than the average costs model to model, individual project or community characteristics may have had more effect on performance than the kind of delivery model used. . . . Economical utilization of private attorneys requires a willingness on their part to participate at a reduced fee, in order to keep costs reasonable. Most of the demonstration projects were able to find attorneys and law firms willing to do so. . . .
>
> Three of the private attorney models (pro bono, contracts, and judicare with a staff attorney component) met

> the staff attorney program standards with respect to "impact on the poverty community."

Professor Richard Schwartz of Syracuse University has critiqued the findings of the Delivery Systems Study for the ABA and has criticized the DSS for intentionally avoiding an analysis which would have revealed varying competencies within a given model, such as the staff model. (See attachment B, especially at page 32).

The costs for routine services obtained through contracts with private legal clinics promise to be lower than the real costs of such services in staff programs. The Corporation has solicited bids on a national level in this area, but local programs can utlize their private attorney involvement funds to secure low-cost services for their clients as well. The Corporation has received unsolicited requests from local bar associations, law firms, and legal services programs in 37 cities to begin contracting with private legal clinics in their areas.

The Corporation has not undertaken a nationwide evaluation of the private attorney involvement funds as yet. The grantees ostensibly finished a complete year of operations under the 10% grant condition in September 1983. Since that time, monitoring visits have addressed the utilization of those funds in the context of the local priorities and resources.

In most cases, programs do not maintain time records for staff attorney work. Therefore, a comparison of the efficiency and effectiveness has not been possible. A recent time study commissioned by LSC did show that in one program staff attorneys and private attorneys doing divorces had comparable efficiency and quality. This bears out the findings of DSS and the critique by Professor Schwartz. Better case reporting and time reporting mechanisms will allow this type of comparison nationwide in the future.

AMERICAN BAR ASSOCIATION

ATTACHMENT A

March 5, 1981

Honorable Jeremiah Denton
Chairman, Subcommittee on Aging,
  Family and Human Services
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Admiral Denton:

On behalf of the American Bar Association, I am writing to express our strong support for one of the programs over which your subcommittee has jurisdiction, the Legal Services Corporation. We hope the program, which is subject to reauthorization this year, will be given full and thoughtful scrutiny; and we are confident that you and your fellow subcommittee members will share our belief in the important role played by this program in our society.

The American Bar Association has been involved actively in the fostering of legal aid programs for the nation's poor for over 60 years. We established a Committee on Legal Aid, chaired by Charles Evans Hughes, in 1920, and that committee worked over the years to encourage the private bar to provide free legal services to the indigent.

By 1965, however, it had become clear that a voluntary program of supplying legal services was simply inadequate to meet even a small portion of the legal needs of the poor, and that a public commitment to ensuring "equal justice for all" was required. Under the leadership of our then-President and now Supreme Court Justice Lewis Powell, the ABA's House of Delegates unanimously adopted a resolution pledging the Association's cooperation with the Office of Economic Opportunity:

> "... in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income, ... such legal services to be performed in accordance with ethical standards of the legal profession...."

The OEO program was initiated that same year and the Corporation was created in 1974. Our Association has closely watched the activities of the program over these years. It is our view that the Corporation, with the limited resources that have been made available to it, has done an excellent job of implementing the mandates of its congressional charter. Thanks to this program, millions of our citizens not only have been able to obtain legal assistance but have had their belief in our society buttressed. By making the legal system work for the indigent, we are enabling them to resolve, through conventional legal means, problems which might otherwise require public assistance or intervention. At a cost of only about $10 per poor person in our society, the Corporation is a remarkable bargain.

The Corporation provides the indispensable core of trained professionals and administrative support that, with the voluntary support of the private bar, makes possible the most effective and cost-efficient delivery of legal services to the poor. We would oppose any effort to eliminate or radically restructure this program. We also believe it is essential to insure that legal services remain independent from political pressures in the cause of representing clients.

We do recommend one change, however, in the manner in which the Corporation is operating. We believe that a greater effort must be made to utilize the abilities and energies of members of the private bar in supplying legal services to the poor. We are strongly encouraging members of the bar to supply legal services to the poor on a pro bono basis. We also believe, however, that a greater utilization of the private bar on a compensated basis will increase the effective and economical delivery of legal services to the poor. We advocate amending the Corporation's charter to provide that, as a supplement to the staff attorney approach, a substantial amount of funding be provided for the delivery of legal services to the poor by private attorneys.

I would welcome the opportunity to discuss these views with you further, either in a personal meeting or in testimony before your subcommittee.

Respectfully yours,

Wm Reece Smith Jr.

Wm. Reece Smith, Jr.

WRS:jsr

cc: Honorable Orrin G. Hatch
Honorable Edward M. Kennedy
Honorable Thomas F. Eagleton

Attachment B

NOTE: This is a report prepared for the Standing Committee on Legal Aid and Indigent Defendants and the Section of General Practice of the ABA. It has not been considered or approved by the ABA House of Delegates and nothing contained herein represents the official policy of the Association. The views expressed herein are solely those of the author and have not been endorsed by either the Standing Committee or the Section.

POLICY IMPLICATIONS OF THE DELIVERY SYSTEMS STUDY OF THE LEGAL SERVICES CORPORATION:

A CONSULTANT'S REPORT

by

Richard D. Schwartz*, Consultant

August 16, 1983

Syracuse University College of Law

---

* The writer acknowledges with appreciation the research assistance of Linda Paez and Harry C. Goplerud.

Copyright © 1984 American Bar Association

OVERVIEW

This is the Final Report of the Consultant to the American Bar Association's Project to Monitor and Evaluate the Delivery Systems Study of the Legal Services Corporation. Since its inception, the Monitoring and Evaluation Project has seemed well worth doing. First, the central policy question motivating the Delivery Systems Study (DSS) is an important one, namely, how can this nation most effectively provide legal services to indigent clients? Second, DSS represents a noteworthy effort to obtain systematic empirical information for answering this question. Third, the organized bar seeks to use that information, to the extent of its validity and relevance, to inform its policy position on the delivery of legal services.

On the last point, it has become increasingly apparent that DSS findings can be used or misused in the effort to draw policy implications. An objective appraisal of method is needed to quard against twin dangers: overreliance and unwarranted rejection. This Project was thoughtfully conceived to guard against both extremes.

Sponsored by two groups in the ABA, the Monitoring and Evaluation Project was intended to provide an objective appraisal of DSS. One of the sponsoring groups was initially concerned that DSS might be used by the Legal Services Corporation to generate findings that would support the Corporation's preference for staff attorney offices. The other sponsoring group became concerned that skepticism about the results of DSS might unwarrantedly discredit its findings.

The Monitoring and Evaluation Project itself was undertaken to obviate both of these concerns. Initiated before any findings were available, the Project was supported equally by both groups. Together they sought an appraisal of the methods employed by DSS, as designed and carried out. In line with this original objective, an Interim Report was completed in March, 1980, before the substantive findings were available.

The Interim Report played a part in the development of the 1980 DSS Report to Congress. With the approval of the Monitoring and Evaluation Project's Advisory Committee (MEPAC), the Interim Report was made available to the Board of the Legal Services Corporation. It was used by the Board to help appraise a March, 1980 draft report summarizing the findings of DSS. The final (June, 1980) DSS Report to Congress and the President reflected the methodological critique of the Project's Interim Report. For example, the final DSS Report abandoned earlier use of "client-satisfaction" as a performance measure because of sampling problems emphasized in the Interim Report.

Along with its cautions, the Interim Report supported some uses of DSS. It determined that conceptual and empirical efforts of substantial scope and integrity had been carried out. While it withheld judgment regarding the validity of the results (which were not systematically available at the time), it urged that these results not be rejected in advance. The concepts and methods employed, as examined in March, 1980, were sufficiently sound to hold out the hope of useful results.

This position, embodied in the Interim Report, met no significant opposition in MEPAC or in the sponsoring ABA units. The Project was suspended at that point, pending substantive findings of the DSS. Those findings being now as complete (it appears) as they ever will be, it is time to appraise the substantive findings.

DSS began its substantive reporting with the June, 1980 Report to Congress and the President. The DSS Report summarized the major findings of the study, building on the contractors' reports, some of which at the time had not yet been finally accepted. Two contractor's reports, the institutional and integrated analyses, had not yet been prepared, even in draft, at that time. As of June, 1980, these reports were projected as significant additions to the corpus of findings comprising the product of DSS.

In the intervening years, little has been added to the materials on which the DSS Report was based. Final reports by contractors did not substantially modify the findings of reports which were available in draft in the spring of 1980. The two pending reports which were submitted in draft during the summer of 1980 and in January of 1981, covered the institutional and integrated analyses in a way which, while interesting, would not necessarily have greatly altered the DSS Report. These drafts were subsequently adopted, substantially unchanged, as final reports.

In this light, the substantive findings and analysis of DSS are largely to be found in the DSS Report itself. This does not mean that nothing can be gained from a close study and analysis of materials (e.g., raw data, working papers, contractors' reports) comprising the background for that Report. To the extent feasible, some background study of this kind has been undertaken. But the main effort of this Consultant's Report focuses on the substantive analysis and findings as given in the DSS Report. This strategy has been employed for several reasons: The DSS Report is widely known; it stands as the authoritative summary by the Corporation; it provides an analytic framework whose utility should be appraised; it uses that framework to summarize a large amount of empirical material and to infer policy conclusions from the factual findings.

The findings of this Consultant's Report regarding DSS may be summarized in the following propositions:

1. The Delivery Systems Study (DSS) carried out by the Legal Services Corporation constitutes the most comprehensive effort undertaken thus far to compare various modes for delivering civil legal services to indigent clients in the United States.

2. It is possible and important to derive from DSS information bearing on the optimum methods for delivering legal services in the future.

3. The DSS Report of 1980 to Congress and the President makes assumptions and reaches policy conclusions that favor staff-attorney offices as the major mode of legal-service delivery. These assumptions and conclusions do not inevitably follow from DSS findings.

4. The assumptions referred to are inherent in the analytic framework of the DSS Report, especially in:

   a. the distinction between policy and research objectives
   b. the concepts of viability, feasibility, and performance

5. Performance measures do not indicate the superiority of staff-attorney offices (SAOs) over alternative (i.e., private attorney) delivery systems (ADSs).

6. Certain ADSs have not yet been adequately tested; others have been tested more fully.

7. Those ADSs which have been more fully tested (judicare, contracts with private law firms, and organized pro bono) seem from available performance data to function at levels comparable to SAOs.

8. Variations within model types are greater in general than variations between model types.

9. This suggests the need to learn more about the circumstances that affect performance within a given model type. The DSS Report deemphasizes such analysis on the (at best) questionable ground that it is not relevant to major policy issues.

10. Information available from DSS provides no basis for choosing the SAO or any single ADS as the exclusive mode for legal service delivery. A high level of performance appears possible for SAOs and many ADSs, under circumstances still to be determined.

11. Support for several models could provide a basis for continued monitoring, evaluation, and strengthening of delivery systems. If a multiple model approach is undertaken, monitoring should be designed with greater economy, reliability, and validity — building on the experience of DSS.

12. Attention should continue to be paid to the development of a "mixed system," implementing legal service delivery through a combination of SAOs, pro bono, and other private attorney programs.

The remainder of this Report consists of an elaboration of these findings and of the informational basis on which they rest. Its conclusion is favorable to continued use of private attorneys, together with staff attorney offices, to permit continuing development of the most effective delivery systems.

From this perspective, it is fortunate that the Corporation instituted in December, 1981, a policy requiring that a "substantial" portion of legal service funds be allocated for private attorney services (Legal Services Corporation, 1981). As of September, 1982, this policy was to have been implemented by the allocation of 10% of the funds to private attorneys. As the first year of this program nears completion, the Corporation's Office of Program Development has undertaken to monitor and evaluate the uses to which this set-aside has been put.

The decision to continue with some use of private attorneys represents a modification of the intent expressed in the 1980 DSS Report. As will be seen in the subsequent analysis, that Report envisioned the expenditure of only $1 million or .5% of the budget for private attorney services. Instead the Corporation has actually allocated twenty times that amount under its 10% directive.

This action by the Corporation is consistent with a proper interpretation of the DSS results. Nothing in the findings of DSS indicated that virtually all funds ought to be used for staff attorney services. On the contrary, DSS results suggested that private attorney services held promise as a way of delivering legal services. The Corporation's 10% directive recognizes that promise, by continuing the use and evaluation of private attorneys under Corporation funding.

More remains to be done. The Corporation plans to monitor and evaluate the use of private attorneys under its 10% directive. Presumably, it will also undertake to compare private attorney with staff attorney delivery systems to determine how each method can best be used in combination or as alternatives.

In this process, it is hoped that measurement and knowledge will substitute for special interest and ideology. If alternative delivery systems are accurately and objectively compared, we may learn the best ways to provide legal services to the neediest segments of our population. The organized bar has a long standing and fundamental interest in seeing that this occurs. Accordingly, it should continue to pay attention to the methods by which the Corporation delivers and evaluates legal services — as well as the logic by which the Corporation interprets its findings.

I. LEGAL SERVICES PRIOR TO THE LEGAL SERVICES CORPORATION

Through the 1950's, efforts to provide legal services for the poor in civil cases remained largely at the state and local level and served a very small fraction of those in need. In the early 1960's, however, the Ford Foundation funded a small number of "neighborhood law offices." These demonstration offices were like local legal aid offices in that they used staff attorneys to provide legal services, but they were located in the neighborhoods of the groups to be served to make the services readily accessible to the poor (Johnson 1974).

As these demonstration offices were being tested, the Office of Economic Opportunity decided to include a "staff attorney program" in its community action program. The OEO's Office of Legal Services began operating in 1965 and within 15 months there were 135 local legal service programs. All but one used the neighborhood law office model. The other program functioned under the judicare concept (support services provided by private practitioners who are paid on a fee-for-services basis) to serve the rural poor in 17 counties.

Although there has been much interest in legal service for the poor, and specifically in determining the relative effectiveness of the staff attorney and alternative systems, there has been an inability to produce reliable data. One important study of the OEO program was that done by the Kettelle Corporation (Kettelle 1971). It attempted to compare staff attorney and judicare programs in terms of cost, quality, client reaction, and ability to meet the legal needs of the client population. The study results were not considered highly persuasive, however, because of serious methodological programs. It did at least pose the hypothesis (as did the following other studies: Auerbach 1971; Champagne 1974; Stumpf et. al. 1971) that private practitioners could represent indigent clients as inexpensively and as effectively as staff attorneys. Other studies on the subject failed to agree one way or the other (Goodman and Feuillan 1972; Greenberger and Cole 1972; Brakel 1974). One thing seemed clear: comparative research on a larger scale was necessary to provide a valid comparison between staff attorney offices and other forms of delivery of legal services (Berk 1974).

In 1972, it became likely that Congress would pass legislation creating an independent corporation to manage the Legal Services Program. There were several amendments to the proposed bills before the Act became law, but each draft contained a section requiring the Corporation to study legal service delivery systems. OLS had fresh in its memory a judicare experiment in California which it had funded but which was never carried out for methodological reasons (UI 1974:4). Also of concern to OLS were the possible time constraints to which the mandated study would be subject. In preparation for the study, it funded further research whereby alternative study designs were developed (UI 1975) and performance and evaluation measures were tested (UI 1976). Also in preparation, OLS attempted to define the model types mentioned in the proposed statute.

II. THE LEGAL SERVICES CORPORATION AND THE DELIVERY SYSTEMS STUDY

A. The Statutory Mandate

In 1974, legislation transferring responsibility for the Legal Services Program to the non-profit organization known as the Legal Services Corporation was passed, containing a mandate "to provide equal access to the system of jutice in our nation" and "to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel" (The Legal Services Corporation Act of 1974 Section 1001 (1)(2)). At that time, and as expected, Congress also mandated a study:

> The Corporation shall provide for a comprehensive, independent study of the existing staff attorney program under this Act and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services. (The Legal Services Corporation Act of 1974, Section 1007(g)).

As the Board of Directors began to staff the Corporation and develop regulations to implement provisions of the Act, it also began to examine implications of the Congressional mandate. It realized after a preliminary examination that a thorough study could not be conducted within the two-year period stated in the legislation. The Corporation decided to provide Congress with an interim report (Delivery Systems Study, LSC 1977:17) with one or more subsequent reports. Congressional oversight committees agreed to allow more time to submit a final report. (LSC 1980:1). That final report was presented to Congress in June of 1980.

B. Roles and Responsibilities in the Study

In keeping with the Congressional mandate, the Corporation attempted to produce an independent study by conducting a multifaceted effort involving the Corporation, research organizations, lawyers in private practice, and social scientists. The following material briefly describes the roles and responsibilities of several groups and individuals who play important parts in the Study.

1. The Legal Services Corporation

The Delivery Systems Study Report was written by the staff of the Legal Services Corporation, on the basis of data collected and analysed by independent contractors. The Study was directed by Leona Vogt, assisted by a staff at the Legal Services Corporation. Ken Smith oversaw the data collection and analysis contracts and assisted in the preparation of the report. Michael Glomb directed the staff operations related to the monitoring of the demonstration projects and also assisted in the preparation of the report. Other staff members helped prepare the report and provided administrative and editorial support for its production. The first president of the Legal Services Corporation, Tom Ehrlich, "provided support and guidance throughout the study" (LSC 1980), and Dan Bradley, president of the Corporation at the study's conclusion "provided leadership and special encouragement in the last year of the study" (LSC 1980:xi).

2. The Delivery Systems Study Advisory Panel

The Delivery Systems Study Advisory Panel -- comprised of representatives from legal, client, and social scientist groups — provided assistance to the LSC in applying social science research methodology to the actual practice of delivering legal services.

3. The Human Resources Corporation

The Human Resources Corporation was retained by LSC to help determine how the "impact of legal services on the client community" would be defined for purposes of the study and to design (with the assistance of the Urban Institute) and conduct data gathering procedures. (HRC March, 1980). HRC also joined with the Urban Institute in developing rating procedures for impact reports.

4. Westat, Inc.

LSC contracted with Westat, Inc. to collect data and report on client satisfaction and to determine the extent to which a given legal service delivery model influences client satisfaction. LSC also contracted with Westat, Inc. to collect, analyze, and report on cost information from the DSS projects.

5. Contract Research Corporation

Contract Research Corporation was retained by LSC to collect quality data from the various projects. Both Group Operations, Inc. and the Urban Institute assisted CRC in checking the accuracy of the coding of data.

6. The Urban Institute

The Urban Institute played an important role in the DSS. Besides the aforementioned tasks performed by the Institute, the following were also done: CRC was provided with target project level sample sizes; a pilot rating session to test four alternative methods of rating impact was conducted; an analysis of and report on the quality of service data collected by CRC; an institutional analysis (in conjunction with HRC and Westat, Inc.) of the study projects; an integrated analysis to generate hypotheses regarding model types to aid in further study.

C. Implications of the Delivery Systems Study

DSS was conceived and carried out on a grand scale. By several measures, it was the most ambitious action-research project of its kind ever undertaken in the field of legal services. More was involved than the resources committed to the Study. DSS carried with it high hopes that it would provide useful answers to the policy questions which it addressed.

The basic question was embodied in the phrase "delivery of legal services." DSS was supposed to examine a variety of "delivery systems," including the standard staff attorney offices, to learn how well each of them could deliver legal services to indigent clients. The operative phrase in the 1974 Statute was "economical and effective delivery."

To obtain an answer to this question, Congress appropriated and the Corporation utilized some $14 million over the six years of the Study's duration. More than two-thirds of this sum, about $10 million, was allocated to the creation and support of 38 demonstration projects distributed among several types of delivery systems models. In a sense, money spent for these demonstration projects cannot be counted as DSS money, since even in the absence of the Study it would have been spent on supplying legal services. In another sense, though, these funds were diverted from the usual staff-attorney mode, in the interest of determining, even at some risk to economy and effectiveness, what techniques would deliver legal services best.

In addition, $4 million was spent on research, studying the performance of the various ADSs by the same measures as were applied to a sample of intensively studied SAOs. The magnitude of this research investment suggests the seriousness with which the task was approached. Moreoever, the figure of $4 million understates the amount of time and effort devoted to DSS. Staff members of the demonstration projects, SAOs, and the Corporation's central office — including many not hired as DSS staff — devoted hours of their work weeks to activities which derived from DSS needs.

DSS became, during the six years of existence, an important part of the work of the Corporation. One reason for this had to do with the research design. Measurement on each of the four performance criteria required that the staff of offices and projects under study cooperate in supplying the necessary information. Those required to cooperate included participating attorneys, paralegals, secretaries, and administrators. While DSS data gathering sometimes became the special responsibility of a data coordinator (especially in SAOs), no amount of specialization precluded others in the units studied from an awareness that the Study was going on.

Despite some misgivings, it is important to note the pervasiveness with which DDS entered the working life of the Corporation and the units it supported. In a large sense, DSS data-gathering activities, however irritating they might seem, were a continuing reminder of the underlying question: How well are legal services being delivered? DSS meant a comparison — implicitly at least — between SAOs and ADSs on the criteria of cost, quality, client satisfaction, and impact on poverty conditions. It thus conveyed a message: that economy and effectiveness were important criteria for these programs to consider. Adding to the significance of these criteria was the comparative nature of the design. Viewed from the perspective of the participants it raised the prospect that their own office might be phased out or expanded, depending on the findings. Competition of this kind can have valuable or deleterious results, ranging from more vigorous and effective efforts to distortion of the data. Since the design of the study in general ruled out significant data distortion, competitive pressure produced by DSS may well have contributed to better service delivery among the studied units.

In a larger context, DSS represented an effort to obtain systematic information relevant to future policy on legal service delivery. From its very start, the Legal Services Corporation was required by Congress to test alternative and supplementary delivery methods using private attorneys. Such an instruction indicated Congressional interest in finding the best ways — or at least making sure that the supported ways met minimal criteria — for delivering legal services.

Corporation and Congressional interest in the results were shared by the organized bar. The ABA demonstrated in its initiation of this Project its interest in the quality of the Study and in its results. The Consortium on Legal Services and the Public organized two national conferences involving representatives of many ABA Committees, experts of various kinds, and public representatives — at which DSS findings were discussed. Committees concerned with judicare, prepaid, and other service delivery programs sought to draw on DSS design and results in addressing a range of issues.

Widespread interest in DSS suggests two things of importance: concern that legal services be well delivered and a belief (or at least a hope) that properly obtained information could help to shape policies toward the desired results. Some other motives may of course have been intermingled with these sentiments. Various legal groups no doubt sought more government jobs, more litigation, or more fees for private attorneys. Employers may have been interested in inexpensive fringe benefits and insurance against legal liability. The National Clients Council sought affirmation of the principle of government-supplied legal services for the indigent. The point here is that, in addition to the motives of special interest groups, there was a widespread concern in such groups and in the informed public generally, in finding out through action research how best to deliver legal services.

This interest in DSS carries important implications for the present and future. The kind of interest generated by DSS is itself a significant social fact. It would be unfortunate if that interest, once aroused, were frustrated. This could occur for any of a number of reasons: publicizing invalid conclusions, failing to find or publicize valid conclusions, or discovering that the conclusions even if valid and publicized provided little guidance for policy decisions.

The present Report is shaped with that concern in mind. While written for the ABA, it is not directed toward meeting the narrowly defined professional interests of one or another set of practitioners. Supported by groups within the bar having divergent types of practice, it is intended to address concerns of the bar as a whole. It rests on the assumption, embodied in the Code of Professional Responsibility, that the legal profession represents the general interest of justice in the society and that it is committed in particular to the goal of providing access to justice to those whose financial limitations impair their capacity to pay for necessary legal services. With that end in view, the DSS should be closely and impartially scrutinized to determine what it can tell the bar -- as well as the government and the public -- about the delivery of legal services for the indigent.

D. Appraising Performance

Pursuing the questions of economy and efficiency, DSS proceeded to operationalize through research design the large question which it had to address. On the basis of earlier studies and in consultation with many advisors, DSS adopted four performance criteria. These criteria were cost, quality, client satisfaction, and impact. They had certain important limitations as well as advantages. At this point in the Report, a brief discussion of both will suffice, since more specific discussion is contained in the Interim Report.

These performance criteria offered the prospect that they could be measured in a reliable and valid manner. Some were more readily measured than others. Cost, quality, and impact measures, taken separately, generated data which (despte some weaknesses) stands up to critical examination. Client satisfaction was not able to be measured satisfactorily, a conclusion acknowledged in the DSS Report.

Each of the measured criteria is important. It is obvious that a delivery system would not be supportable if its cost were excessive. Likewise, no delivery system could stand if the quality of service were pervasively low enough to be of negligible or negative value. If it had proved measurable, client satisfaction would also have been important -- though arguably less crucial than cost and quality. The evaluation of impact is more problematic. Other outcomes equal, all would favor low cost and high quality and no one would seriously oppose client satisfaction. Impact introduces some outcomes, however, which lead to disagreement. The definition of impact may not sound controversial: "achievement, or expected achievement, of relatively permanent improvement or avoidance of relatively permanent deterioration in the legal rights or basic living conditions of significant segments of the eligible population." A close reading of this definition raises questions such as, "What constitutes improvement or deterioration? For whom? In whose judgment? If some members of the eligible population are "improved" and others hurt, how are these effects summated? What are the costs of successful impact for others, outside of the eligible population, who bear the burden of the improvements? Such questions were largely finessed in the measurement process, DSS relying primarily on the judgments of staff informants as to the amount of impact work undertaken and the actual or potential success achieved.

Aside from problems of measuring individual performance criteria, DSS faced some other important measurement questions. These may be presented here as issues. First, were there other criteria which bear on the long-range value of a delivery mode which were not measured by DSS? If so, what were these other considerations and why were they missed? Were they unmeasurable in practice or in principle? How might they be taken into account in analyzing the results of the Study?

Second, for the performance criteria actually measured, how might they be interrelated with each other? Cost and impact being measured separately, what techniques would be employed to relate these to each other? What options were available for constructing indices of quality in relation to cost or impact in relation to cost?

Apparently such questions were to be dealt with by two supplementary analyses. The integrated analysis was aimed at interrelating the separate performance measures. As it was actually developed, however, the integrated analysis proved to be largely an acknowledgment of the difficulty of the problem rather than a solution to it. The institutional analysis resulted in substantial qualitative data concerning the management process in each unit. This data has been used to a very limited extent in constructing the institutional analysis. Neither of these analyses entered significantly into the DSS Report.

It should also be noted that performance measures and the supplementary analyses did not exhaust the range of information which would be relevant to the shaping of policy on legal service delivery. While these parts of the Study contained valuable information, other identifiable considerations were not included in the Study itself. Some observers might consider it important, for example, to weigh the effect of a given delivery system on the structure of the bar. The full-time employment of a substantial segment of the bar in staff-attorney legal service offices might well have effects on the nature of legal practice, legal ethics, the role of lawyers in politics, and the availability of legal talent in the private sector.

This observation is introduced not to criticize DSS. It is too easy to point out the deficiencies of any study and to forget that no study is complete in the sense that it covers every question which might be important. Rather the point is made to caution against the temptation to assume that all relevant questions are covered by the Study and that anything not covered in the Study can be safely ignored in the policy-shaping process. It is also relevant to the recommendation that monitoring and evaluation be continued and strengthened in the future.

III. ANALYSIS OF THE DSS REPORT

The DSS Report organizes an extensive body of material into a succinct statement intended to draw policy implications from the Study. To this end, the DSS Report selectively presents data from the Study within the boundaries of a limited conceptual framework. The present section seeks to describe that framework, to point out its implicit assumptions, and to discuss the implications of those assumptions. Two major aspects of the DSS Report require attention in this context: 1) the focus on "policy" vs. "research" objectives; and 2) the use of the concept of "viability" to describe modes of legal service delivery.

A. Policy and Research Objectives

According to the DSS Report, the Delivery Systems Study was originally intended to serve "two different but compatible goals," policy and research. The Report itself focuses, however, on what it describes as "policy" rather than "research" objectives. To understanding the DSS Report, it is essential to analyze the distinction between policy and research objectives, as used in the Report.

Policy objectives (which are the subject of the DSS Report) focus on "major policy issues" (DSS Report: 1) concerning which the Corporation has (in its words) "a statutory obligation to submit to the Congress and the President recommendations from this study concerning improvements, changes or alternative methods for the economical and effective delivery of services." (Id.:vi).

The research objective, intentionally not pursued in the DSS Report, was deferred to a future time. It is described in the Report in the following terms:

> to provide information to support decisions on 1) which models are appropriate for a specific community, given local conditions and needs, and 2) how to design and implement a project to assure economical and effective delivery of legal services. (DSS Report:15)

These are said to be "decisions that can be made by Corporation grantees as long as they comply with Corporation regulations and standards." (Ibid.) The Report implies that the research objective, plus information and analysis related to it, is of no concern to

Congress -- since it is not relevant to major policy issues which Congress must decide. On that ground, the Corporation says it will exclude from its Report to the President and Congress "research analysis [which] addresses the following questions:

1) What factors, such as program design, operations and environment, have a strong effect on performance?
2) What levels of performance can be expected from various models? (Id.:15)

At a later point in this Report, this decision will be called into question.

In interpreting its statutory obligation to report on "major policy issues," the Corporation seems to have been guided by a perception of Congressional rather than Presidential powers. This is understandable considering the administrative autonomy exercised by the Corporation under the statute. At all events, the focus on Congressional authority was apparently strong enough to lead it to reverse the statutory phrase specifying the recipients of the Report. The statute calls on the Corporation to report the results of the Study "to the President and the Congress." (42 U.S.C. § 2996f[g].) The Report in its title and text (vi, 14) instead uses the phrase "to the Congress and the President."

The "major policy issues" of Congressional concern are described in the Report as those which might lead to 1) statutory change or 2) appropriation of funds. In deciding what belonged in its DSS Report, the Corporation was guided by the principle that it should concentrate on data and analysis relevant to these "two sets of recommendations on which Congress or the President (in terms of recommendations to Congress) could act." (vi)

Under these two headings, the Report announces early (vi) that it will recommend neither statutory nor budgetary changes. The reason for making no recommendations is somewhat different in the two instances.

Statutory changes in the Legal Services Corporation Act are not recommended, it says, because "nothing in the Study results supports any change." This assertion seems at first glance to rest on the broad-minded view that variety in delivery service modes is desirable and that discretion in determining the best modes should be left to the Corporation. The language embodying this view is worth reproducing here:

> Congress should retain the statutory authority that now provides the flexibility to develop particular systems for delivering legal assistance that are relevant to local circumstances. The Act now permits utilization of any of the models included in the Study, and indeed several are being funded now, outside the Delivery Systems Study context. Nothing in the Study or in the broader legal services experience would support any change mandating a particular delivery approach. (vi)

This statement suggests that the Corporation intends to exercise its discretion to support a variety of models "relevant to circumstances." Since the Act already provides sufficient discretion, the argument goes, Congress need not accordingly concern itself at present with information bearing on performance differences among the different models.

This position must be considered in light of the fact that the Corporation had at the time of its Report provided virtually no support for private-attorney based systems except for the demonstration projects. In exercising its discretion, the Corporation decided to expend its legal service budget almost entirely on staff-attorney offices. The only substantial exception to that policy consisted of the 38 demonstration projects. These were supported in compliance with the statutory mandate requiring demonstration projects. As the DSS drew to a close in 1979, a majority of these projects were terminated.

The DSS Report can be read to imply an intention to exercise discretion in ways that might support alternative (i.e., private attorney) delivery systems. A closer look raises questions as to the dependability of this implication.

The Corporation declared it would not replace "effective programs now in operation." (vii) This seems to mean that SAOs and not ADSs would be retained since the ADSs were by that time either phased out or put on notice of termination.

The Corporation did suggest that it would consider private attorney plans "as we move beyond the completion of minimum access." Taken together with the earlier phrase about not replacing effective programs in operation, this seems to mean tht private attorney plans would be considered only after staff-attorney services were available, across the nation, at a rate of two attorneys per 10,000 indigent people.

The nature of this "consideration" was to involve several activities:

1. Continued funding of "a number of the most successful demonstration projects at a cost in 1980 of $1 million.

2. Completion of the integrated analysis specifying how the performance criteria fit together.

3. A coordinated program for developing optional legal services including:

   a. "technical assistance to communities interested in reexamining delivery approaches"

   b. "training for local program managers on local delivery systems design"

   c. "specific practical materials on delivery systems for local use, suitable for publication in Clearing House Review and as separate manuals."

4. Paying "full attention" in future budget requests to Congress "to the relative need for additional appropriated funds to support expanded participation of private attorneys" in legal service delivery in ways that have been shown to be effective and economical by DSS. (DSS Report vii-viii)

Even if all of the first three activities were carried out, they hardly promise a major effort to involve private attorneys in the program of the Corporation. The $1 million was a small (.5%) proportion of the total field service budget. It was used to support a minority (14) of the 38 demonstration projects, not to develop new private-attorney services. Neither the integrated analysis nor the technical services would have provided much help for planning such programs at the local level — absent a decision to foster, with substantial budgetary support, service delivery programs which made major use of private attorneys.

The position of the Corporation made budgetary support (consideration #4) unlikely. The Corporation asserted or implied that:

1. It should retain the discretion, as provided in the current statute, to decide between SAOs and ADSs.

2. That it would retain SAOs for meeting all requirements for minimum access.

3. That after that requirement was met, it would give full attention to the request for private-attorney funding effectively and economically as shown by DSS, even though

4. "increased funding will be necessary to support optimal delivery systems involving staff attorneys and attorneys in private practice who are capable of responding more fully to client needs." (vi)

Statement #4 is, of course, inevitably true if the position in #2 is maintained. In effect, the Corporation urged the Congress to sustain the Corporation's discretion on private-attorney involvement, suggested that it would use that discretion in an informed way based on the findings of DSS, but implied that it would continue to use SAOs exclusively to provide minimum access (which was barely available at the high tide of Corporation funding), and told the Congress that only after that minimum access is provided will it consider requesting funds for private-attorney involvement.

This position posed great obstacles for private-attorney programs. If Congress accepted the recommendation not to alter the statute, and if the Corporation continued to support only SAOs for minimum access, then Congress could facilitate private-attorney programs only if it put up additional funding for the purpose. At a time of budget-cutting, this would have made the prospects of private-attorney programs rather slim.

DSS is used in the Report to support continued, virtually exclusive reliance on SAOs as the means of legal service delivery. This conclusion does not derive inevitably from the data obtained by the Delivery Systems Study. Rather it is the product of an intricate argument which uses data, analysis, and policy assertion in a complex intermixture. Disentangling these elements is necessary to make clear that the DSS findings do not dictate the policy conclusions of the DSS Report.

The findings of the DSS, to the extent of their validity, suggest that several private-attorney based systems, as well as SAOs, can function economically and effectively to fulfill the legal needs of indigent clients. The DSS Report acknowledges this. Yet the Corporation concludes that it will retain SAOs as the basic, virtually exclusive model. DSS results are used in the Report to support this policy by focusing on the "policy" rather than the "research" question, as noted, and by adopting a particular method for analyzing the empirical results. This mode of analysis must now be explained.

Before turning to that analysis, however, it is important to note that the Corporation has departed from the policy conclusions of the Report. Within a year following submission of the Report, the Corporation adopted a policy requiring that 10% of all allocations for legal services be used to pay private attorneys. This policy constituted a departure from the conclusions of the Report and a step in the direction of mixed service delivery.

Even so, the implications of the Report should not be left unchallenged. The tendency to rely exclusively on SAOs may reassert itself, using the purported findings of DSS as support. Also, the allocation of 10% to private attorneys appears to be a token concession rather than a policy based on a serious appraisal of the circumstances under which private attorneys may best be used. To determine when, where, how, and to what degree private attorneys contribute best to service delivery for the indigent, a flexible policy is needed — one that promotes innovation and information. The stance of the Report stands opposed to such an approach.

B. The Viability of Service-Delivery Modes

Viability is a concept that emerges as central in the DSS Report. It is at the core of the policy analysis described above. That analysis was undertaken, "To support the Corporation's recommendations to Congress and the President." (DSS Report:6) Although described as "part of the Delivery Systems Study" (ibid), neither the policy analysis in general nor the concept of viability which is central to it constitute inevitable products of the Study.

As the viability concept is developed and used, it accords full support to SAOs and is not incompatible with exclusive reliance on them. The definition of viability contributes substantially to these results. To understand how that works, a discussion of the viability concept is required.

The concept of viability is introduced in the DSS Report as follows:

> The broad criteria used to assess the viability of private attorney models as alternatives and supplements to the staff attorney program were feasibility and performance . . . If a model met the feasibility and performance criteria then it would be considered a viable delivery model to be used by Legal Services Corporation grantees. (p.6)

Viability is not explicitly defined beyond that. According to the dictionary, the term means (1) capable of living, (2) capable of growing or developing, (3) capable of working, functioning, or developing adequately, or (4) capable of existence and development as an independent unit.

As used in the DSS Report, viability appears to be an affirmative finding. None of the models in the study is explicitly designated as "not viable." Rather, the designation of viable is accorded to three of the private attorney models: judicare with staff attorney component, contracts with law firms as supplement to staff attorney programs, and organized pro bono. These three (of eight ADS models considered) were declared to be viable because they met all of the feasibility and performance tests.

At this point, it is necessary to describe in summary fashion the elements of feasibility and performance. "Feasibility means the extent to which a project demonstrates that a particular model can be implemented and serve clients as proposed." (1977 Report: 30) In the 1980 Report (p. 17), the criteria of feasibility are spelled out in detail. "A model was judged feasible if it met the following criteria:

"1. The model described can be put into operation.

> An adequate number of organizations express interest in operating the model.
>
> Reasonable plans can be developed by grantees to implement the model.
>
> Model specifications can be followed by the grantees.

"2. The model can be operated in compliance with the Legal Services Corporation Act and regulations.

> At least some projects within a model complied with the Act and regulations.

"3. The model can address the legal services needs of the client population.

Projects within a model are able to provide the same range of legal services as the staff program.

"4. The model can gain support of the legal community.

Projects within a model are supported by the local legal community."

The Report states in general terms that feasibility criteria 1, 2, and 4 represent standards set by the Act and the Corporation. It explains the third item as requiring that the model type show a range of cases comparable to those handled by the SAOs:

> If the case type distribution of a private attorney model were very different from that of a staff attorney program, it would be questionable whether it was meeting the needs of the poor. If the difference were major and could not be explained or justified (e.g., a supplement model where most projects specializing in family law problems would, by design, have a narrow range of services), the model would not be considered feasible. (pp. 17-18).

It will be noted that SAOs constitute the standard against which private attorney programs are judged. These standards are set up in a manner which ensures that SAOs will inevitably be feasible, whereas feasibility will be problematic for the ADSs. Moreover, the judgments regarding feasibility of private attorney programs are made by the Corporation, with limited information in the Report as to the basis for the judgment.

This procedure leaves something to be desired as a method for reaching objective judgments concerning viability. Suppose, for example, the Corporation has begun by supporting private-attorney judicare programs and had developed criteria, standards and normal distribution of case loads on that basis. When requested to appraise staff-attorney offices, it might then include as criteria such items as client choice of attorney, regular relationship between the attorney and the clients, and case loads approximating those of judicare programs. Staff attorney programs subject to such a test might well fail to be judged feasible.

A similar difficulty is found in the use of the performance criteria. The DSS Report (18) describes these in the following words:

"(a) Cost

A private attorney model met the standard is most of the projects being tested had costs in the same range as or lower than those of the staff attorney program.

"(b) Client Satisfaction

A private attorney model met the standard if most of the projects tested had client satisfaction scores in the same range or above those of the staff attorney program.

"(c) Quality

A private attorney model met the standard if most of the projects tested had quality ratings in the same range as or higher than those of the staff attorney program.

"(d) Impact

A private attorney model met the standard if most of the projects tested had impact scores in the same range as or higher than the staff attorney program."

In the case of the performance criteria, it was not necessary to meet all four. The criterion of "client satisfaction" was dropped from consideration in determining viability. This decision reflected a sound methodological judgment, since a very low return on the client satisfaction study made the results subject to unacceptable levels of sample bias.

Retention of the remaining three performance criteria led to some questionable results, however. By including all three criteria, the DSS Report introduces an implicit judgment concerning the need for each model type to have manageable cost, adequate quality of legal service, and impact scores comparable to or better than SAOs.

Implicit in this procedure is the judgment that each model, to be declared viable, must not only provide quality legal service as reasonable cost (a non-controversial proposition) but also that it must have impact on the conditions of life in which indigent people live. This implicit assumption creates two significant kinds of problems.

First, there are the problems associated with consensus regarding the impact criterion. As noted above, there is no problem of consensus regarding the requirement of reasonable cost. While differences might develop on the measurement of cost, these have been handled reasonably well in the Study and its Report. Similarly, the matter of quality in the handling of individual clients has been covered fairly well through the use of outside appraisers, although problems remain on questions of reliability, direct observation, and appraiser bias arising from the selection and orientation of the appraisers. (These problems are discussed in detail in the Consultant's Interim Report.) On impact, however, there are problems which arise because one person's "impact" is another person's loss. This may occur within the poverty community itself or in the relations between poor people and others. To have such value laden issues in the hands of the project administrators is to invite judgments which are bound to be misleading. All that impact measure really shows is that the administrators believed they had launched projects which they thought would have a (presumably) net favorable effect on the life chances of the poverty population. If a project administrator was not prepared to claim such effects, his or her project could be said to have had no impact and therefore to have failed to meet the criteria of viability.

The second difficulty with including impact in the context of performance and viability is that it builds in the assumption that all viable model types must have an impact component. This is tempered for some of the models, as when pure judicare might meet the impact criterion provided it is linked with a staff attorney component. But prepaid plans are said to have failed to have demonstrated viability because they report no impact — indeed, apparently were not permitted to report impact — and the Corporation sees no way in which that might plausibly change.

Even assuming that impact is an accepted and measurable consensus goal for legal services, this method raises some real questions. It implies that any model for organizing legal service ought to have an impact component. An alternative approach would be to design legal assistance with a division of labor. Individual clients might best be dealt with by private attorneys, for example, while law reform and impact might be pursued by staff-attorney offices, pro bono programs, or even state attorney generals. The idea is open to question that both kinds of activity should be tied together in a single model. It is an interesting idea and one worth studying. But it is not one which should be built into the reporting of an empirical study with the implication that the Study itself leads to this conclusion. Unfortunately, the intermingling of policy analysis and empirical findings obscures this fact, suggesting that the findings lead to this conclusion.

The result of applying the viability analysis is that several of the models fail on various grounds to be declared viable. Two of them, voucher and legal clinic, were "not fully tested." They were designated as having failed to meet the criteria of feasibility, a judgment made for different reasons in the two cases. The one voucher plan which was supported at all reportedly was not sufficiently used by its intended clients, and thus "never became fully operational" (43). It was converted after a short time to judicare. Clinics were considered not feasible because they were declared not able to implement the delivery model specified by the Corporation. Beyond that phrase, the Report provides little information as to how this failure of implementation occurred. Prepaid plans lost the designation of feasibility because of failure in four to six cases "to implement the prepaid model as prescribed." As with clinics, the precise nature of that failure is not made clear in the Report. Prepaid models, as noted, turned out to have another flaw which would constitute a basis for failing to be adjudged viable: they failed to show any capability of meeting the criterion of impact. Two types of judicare (supplement to a staff attorney program and pure) also failed to meet the impact criterion. Thus, the inclusion of impact as a performance requirement support the conclusion that three of the eight private-attorney models were not viable.

The danger in such an analysis is that it obscures the underlying issues. In undertaking to provide legal services to its indigent population, the society has assumed an important responsibility. The policy questions which are entailed in such a commitment are numerous and complicated. If they are not fully understood, they may be handled in a way which jeopardizes the entire program. If, for example, the Congress comes to believe that it must choose between legal services with impact and no legal services, it may choose the latter. The implication of the DSS Report that this is the only choice available is thus inaccurate in a potentially mischievous way.

Similar difficulties arise from other aspects of the viability analysis. The feasibility requirements are applied in ways that seem to rule out clinics and voucher plans. These results may be attributable to the manner in which such efforts were sought and administered. The failure of a given plan may have resulted from the nature of the requirements to which it was subjected. Is it proper to assume that failure to meet those requirements, specified in the statute or the Corporation regulations, justified the designation "not shown to be viable?" Might it not be sounder to ask whether those requirements and procedures should be reviewed to determine whether they are inhibiting the development of new techniques for meeting legal service-delivery needs?

The DSS Report might have taken this approach. The Study itself generated a large amount of information that could have been used to address the larger issues of policy in the delivery of legal services.

This can still be done. The experience of the demonstration projects is available on the record and in the memory of those who participated. What is needed is a new look at the knowledge generated by the Delivery Systems Study.

Such a new look can provide a basis for approaching again the fundamental policy questions. The American Bar Association may have a role to play in such an effort. By questioning the conclusiveness of the DSS Report, it might help to reopen the questions that DSS was designed to study. In returning to those issues, a restudy could use the DSS experience to correct some deficiencies and to attain valuable policy guidance.

In particular, it is important that the research objective of the Study be revived for full consideration. As noted above, the DSS Report did not focus on the research objectives. In effect, it ruled out questions concerning the circumstances under which various models achieved their greatest economy and effectiveness. Yet the variability in performance within model types strongly suggests the importance of inquiring intensively into these questions. Research which explores within model variability holds the promise of revealing ways of strengthening the performance of a given model type, as well as locating the circumstances under which it can operate, separately or in conjunction with other types, most adequately.

IV. SUGGESTIONS FOR THE FUTURE

This section will be very brief. It ought in a sense to be written not by the Consultant but by the responsible members of the American Bar Association, particularly the members of the Monitoring and Evaluation Project Advisory Committee. In the suggestions made here, the Consultant intends only to outline a few ideas in the hope and expectation that they will be usable by the ABA to help develop a fuller set of proposals.

The foregoing analysis and description have shown how the DSS Report was used to support a particular policy approach. This approach does not seem to be dictated by the experience or findings of the Delivery Systems Study.

Rather the Study itself points in another direction. The findings do not provide a basis for excluding private-attorney delivery systems. The success of several of those systems, even under difficult criteria and conditions, suggests that they have substantial prospects for the future. Moreoever, those models for which "viability" was not established may also have some prospects if given closer scrutiny. Some new forms might also emerge, if encouraged, which would economically and effectively make use of private attorneys for the delivery of legal services to the indigent. Finally, close attention should be paid to the prospect that some of these programs could combine paid private attorneys, staff attorneys, and pro bono efforts in an optimal blend.

The Delivery Systems Study could contribute to such an effort in several ways. It has provided a range of experience on which can be based creative suggestions for new ways of solving delivery problems. When these ideas are brought together, they could be helpful to people in the field wishing to try new methods.

Also, the experience of DSS would be helpful in showing how to encourage (and how to avoid discouraging) new efforts along these lines. In recruiting propoals, DSS had considerable success, despite the pressure of time, in eliciting interest. Given a longer period and the benefit of earlier experience, the Corporation might be able to elicit proposals from a broader range of lawyers and wider variety of model types. The diverse ways in which private attorneys are currently being used, under the 10% directive, indicate the variety of alternatives possible.

In supporting such efforts, the Corporation can learn a great deal concerning what to do and what not to do. Generally speaking, the demonstration projects seem to have managed their affairs in spite of Corporation advice, monitoring, and technical assistance. Methods of accomplishing the needed regulation without impingement or harrassment are clearly needed. If some of the private-attorney programs could be given more discretion, they might succeed to do the job more effectively. Monitoring systems, clearly needed in some form, should be developed to minimize these problems.

It is not at all clear that such monitoring ought to be left in the hands of the Corporation. In the experience of the DSS Report (and to some extent of the Study) there is evidence that the Corporation's preference for SAOs affected the analysis and conduct of the Study. Nor would it help if, in new political circumstances, the bias went the other way. A more balanced approach might better be attained by placing the responsibility for monitoring and evalution in the hands of an independent governmental entity (such as the

CBO, GAO, or NIJ), or even a non-governmental entity such as the National Academy of Sciences.

All of this presupposes that private-attorney based delivery systems will continue to receive governmental support in the future. Whether that occurs depends on a variety of unpredictable factors. If the Congress or the Corporation were to move in that direction, it would not be surprising. There is support for such an approach in many segments of the bar. The findings of DSS certainly do not preclude continuing efforts along these lines, especially if a new effort is monitored effectively. Competition between SAOs and private-attorney systems might well be salutary -- each keeping the other honest. A division of labor and mutually helpful cooperation might also be expected, in light of the experience during DSS in places such as San Francisco, Boston, and Washington.

At all events, these possibilities deserve serious consideration. The ABA might well, upon reflection, decide to contribute to the continuation of a mixed system of legal services.

If a new effort is undertaken, credit should also be given to those professionals who developed DSS and tried under difficult conditions to preserve its integrity and make it generate usable knowledge. Their performance constituted an excellent effort at the application of scientific methods to the study of difficult policy questions. What is needed now is a continuation and strengthening of that effort as a way of guiding renewed efforts to learn how best to deliver legal services to those who need and deserve fuller access to justice.

REFERENCES USED

ARMSTRONG, J. SCOTT (1975) "Monetary Incentives in Mail Surveys." Public Opinion Quarterly 39:111-116.

AUERBACH CORPORATION (1971) Office of Legal Services Individual Project Evaluation: Final Report. Washington, D.C.: Office of Economic Opportunity, Legal Services Program.

BERK, RICHARD A. (1974) "Champagne's Assesment of Legal Services Programs: An Evaluation of an Evaluation." Urban Affairs Quarterly 9:491-509.

BRAKEL, SAMUEL J. (1974) Judicare: Public Funds, Private Lawyers, and Poor People. Chicago: American Bar Foundation.

CAMPBELL, DONALD T., ROBERT BORUCH, RICHARD D. SCHWARTZ, and JOSEPH STEINBERG
(1977) "Confidentiality-Preserving Modes of Access to Files and to Interfile Exchange for Useful Statistical Analysis." Evaluation Quarterly 1:269-300.

CAMPBELL, DONALD T. and JULIAN C. STANLEY (1963) Experimental and Quasi-Experimental Designs for Research. Chicago: Rand-McNally.

CHAMPAGNE, ANTHONY (1974a) "A Reply to Berk." Urban Affairs Quarterly 9:510-513.

CHAMPAGNE, ANTHONY (1974b) "An Evaluation of the Effectiveness of the OEO Legal Services Program." Urban Affairs Quarterly 9:466-489.

CHAMPION, DEAN J. and ALLEN M. SEAR (1969) "Questionnaire response rate: a methodological analysis." Soc. Forces 47:335-339.

CLARREN, SUMNER (1977) "Sampling considerations for the staff attorney comparison projects." Unpublished memorandum on Urban Institute letterhead to LSC Delivery Study Task Force, dated March 3, 1977.

45 CODE OF FEDERAL REGULATIONS § 1621 (1979).

CONTRACT RESEARCH CORPORATION (1979) Peer Review Manual: Quality of Legal Services Study. (Case Interview Guide: Case Rating Form) (Unpublished, hand-dated June 5, 1979), 25 Vlanders Road, Belmont, MA.

DILLMAN, DON A. (1972) "Increasing mail questionnaire response in large samples of the general public." Public Opinion Quarterly 36:254-257.

GEORGE, WARREN E. (1976) "Development of the Legal Services Corporation." Cornell Law Rev. 61:681-730.

GOODMAN, LEONARD H. and JACQUES FEUILLAN (1972) "Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program." Washington, D.C.: Bureau of Social Science Research.

GREENBERGER, HOWARD L. and GEORGE F. COLE (1972) Final Report: Connecticut State Welfare Department Legal Services Demonstration Project [in] Meriden, Connecticut. New York: Institute of Judicial Administration.

HAWKINS, DARRELL F. (1975) "Estimation of non-response bias." Sociol. Meth. & Res. 3:461-485.

HOUSE, JAMES S., WAYNE GERBER, and ANTHONY J. McMICHAEL (1977) "Increasing mail questionnaire response: A controlled replication and extension." Public Opinion Quarterly 41:95-99.

HUMAN RESOURCES CORPORATION (1979) Data Collection Manual: Study of Impact on the Poverty Community. (Unpublished, dated Sept. 19, 1979), 1109 Oak Street, San Francisco, CA.

JOHNSON, EARL, JR. (1975) Justice and Reform: The Formative Years of the OEO Legal Services Program. New York: Russell Sage Foundation.

KANUK, LESLIE and CONRAD BERENSON (1975) "Mail surveys and response rates: a literature review." J. Marketing Res. 11:440-453.

KETTELLE (JOHN D.) CORPORATION (1971) Evaluation of Office of Economic Opportunity Legal Services Program: Final Report, Paoli, PA.

LEGAL SERVICES CORPORATION (1976) "The Delivery Systems Study: Summary of concept papers, solicitation process and preliminary results," (mimeographed report, July 13, 1976).

LEGAL SERVICES CORPORATION (1977) Delivery Systems Study: A Research Project on the Delivery of Legal Services to the Poor. (A report to the President and the Congress of the United States as required by the Legal Services Act of 1974, Section 1007[g].)

LEGAL SERVICES CORPORATION (1978a) Annual Report Fiscal Year 1978.

LEGAL SERVICES CORPORATION (1978b) Statistical Reporting System Instruction Manual for the Delivery Systems Study Demonstration Project (SRS-38) (mimeographed manual, Sept. 1978).

LEGAL SERVICES CORPORATION (1978c) Statistical Reporting System Instruction Manual for the Delivery Systems Study Staff Attorney Projects (SRS-12) (mimeographed manual, Nov. 1978).

LEGAL SERVICES CORPORATION (1979) Statistical Report System for the 48 Staff Attorney Programs Involved in the Delivery Systems Study (SRS-48) (mimeographed manual, March 1979).

LEGAL SERVICES CORPORATION (1980) Delivery Systems Study, A Policy Report to the Congress and the President of the United States.

LEGAL SERVICES CORPORATION (1981) Private Attorney Involvement by Recipients of Funding, 46 *Fed. Reg.* 61,017.

LINSKY, ARNOLD S. (1975) "Stimulating responses to mailed questionnaires: a review." *Public Opinion Quarterly* 39:82-101.

MILLER, MELVILLE D., JR. (1977) "PRS - Next Chapter." PAG Report #12. Unpublished memorandum on letterhead of Project Advisory Group, National Organization of Legal Services Organization to all Legal Services Programs, dated Dec. 12, 1977.

PRITCHARD, LLEWELYN G. (1978) "Private Bar - Public Bar Relations Project." Memorandum on Legal Aid and Indigent Defendants to the American Bar Endowment.

ROBINS, LEE N. (1963) "The reluctant respondent." *Public Opinion Quarterly* 27:276-286.

SCHWARTZ, RICHARD D. (1980) Research Methods in the Delivery Systems Study of the Legal Services Corporation: An Interim Report. (Mimeographed report).

SHARP, HARRY and ALLAN FELDT (1969) "Some factors in a probability sample survey of a metropolitan community." *American Soc. Rev.* 24:650-661.

STUMPF, HARRY P., H. P. SCHROERLUKE and FORREST D. DILL (1971) "The legal profession and legal services: explorations in local bar politics." *Law & Society Review* 6:47-67.

URBAN INSTITUTE (1974) Development of Evaluation Designs for Assessment of Alternative Legal Services Delivery Programs.

URBAN INSTITUTE (1975) Experimental Design Options to Test Various Approaches to the Delivery of Legal Services to the Poor.

URBAN INSTITUTE (1976) Field Test Results of Peer Review Quality Assessment of Legal Services, Client Satisfaction, Cost and Access Analyses.

U.S. CODE NEWS (1974) U.S. Code Congressional and Administrative News 93rd Congress, Second Session 2:3872-3912.

42 UNITED STATES CODE 2996 (1974).

VOGT, LEONA, et al. (1976a) "Field test results of client satisfaction survey." Washington, D.C.: The Urban Institute (mimeographed report).

VOGT, LEONA, ET AL. (1976b) "Field test results of peer review quality assessment of legal services." Washington, D.C.: The Urban Institute (mimeographed report).

WESTAT, INC. (1979) Cost Analysis Data Reliability and Validity: A Working Paper (mimeographed report, July 5, 1979).

WORRELL, CAROLYN (1977) "Site selection process for the 60 site PRS implementation — determination of total size of LSPs." Unpublished memorandum on Legal Services Corporation letterhead to Leona Vogt, dated Feb. 4, 1977).

Q: To what extent is the shortfall in services to the institutionalized, elderly, and handicapped the result of budget cuts approved by Congress in prior years? Might it not make more sense to use the funds to further increase the funds for the basic field programs?

A: In the Legal Services Corporation Act the Corporation was required to study the special problems of access for the institutionalized, elderly, handicapped, veterans, and migrants. Despite the fact that the Section 1007(h) study was completed and submitted to Congress in 1980, during the period when the Corporation was at its highest funding level in 1981, the Corporation made no efforts to address the problems of access for institutionalized, elderly, and handicapped persons. In fact, the LSC Board during that period specifically declined to allocate funding for these special access concerns even though money was available for expansion.

Therefore, the "shortfall" in services to the institutionalized, elderly, and handicapped is not the result of budget cuts approved by Congress in prior years. Rather, the major reason for lack of legal services to the institutionalized and other persons in need of legal services but who have special access problems can be traced to the basic funding allocation formula frozen into law by the Rudman Amendment. This approach to funding makes grant awards to programs based on a poverty population count of the Bureau of Census that does not include the institutionalized. The institutionalized, elderly, and handicapped are an underserved target population and grants to meet their needs should not be subsumed in basic field funding. Instead funds should be specifically allocated as component funding to existing programs or to independent grantees who are prepared to commit the funds to serve the particular population and who have shown present adequate plans for doing so.

Section 1007(h) of the Legal Services Corporation Act requires that the Corporation "implement appropriate recommendations." It is not clear to what degree budget cuts approved by Congress have resulted in reduced services to the institutionalized, elderly, and handicapped. But, it is clear that service to these groups who are not even necessarily included in poverty counts and who have special access problems will not be ensured by locking in funding to present basic field programs for whom such problems may not be a priority. Unless a community's population is comprised primarily of institutionalized, elderly, and handicapped, there is no reason to believe that the problems of these groups would become a priority for a basic field program.

The Corporation was attempting to "implement appropriate recommendations" by requesting supplemental funds from Congress in attempting to meet the demonstrated access needs of these persons eligible for legal services.

Q: Your budget submission provides for no increase for the National and State Support Centers. These are the only service programs for which no increase was recommended, yet no reason for this was given. Would you tell us why?

A: President Bogard noted in his responses at the hearing that approximately $15 million had been allocated for the support programs. He added that the Corporation is currently undertaking a support study and that a decision was made not to make funding increases for these non direct delivery programs until the study was complete. Furthermore, these programs in 1984 received higher increases than most LSC-funded basic field programs.

Section 1006(a)(1)(B) allows the Corporation to make "such other grants and contracts as are necessary to carry out the purposes and provisions" of the Act. Since the support entities by their own assessments do not restrict their activities to the provision of legal assistance to eligible clients, funding for them can only be justified pursuant to 1006(a)(1)(B) or 1006(a)(3). The studies of support will help to ascertain whether the continued or increased funding of the support centers is justified.

The Corporation is required to ensure that appropriate services are provided, taking into account the relative needs of eligible clients, including particularly the needs for service on the part of significant segments of the population with special difficulties of access to legal services or special legal problems. See Section 1007(a)(2)(C)(ii) of the Legal Services Corporation Act. This determination of the "appropriate" support services to be provided requires periodic examination and study similar to the studies and necessary adjustments that have been made in the past. Simply awarding every existing state and national support center a percentage increase in funding would be irresponsible and would not ensure that the most important support needs of local program staff and clients are provided.

In fact, the survey of the support needs of basic field programs conducted by the University of Chicago's National Opinion Research Center showed that co-counsel is not a need of the staff or Judicare programs. It is listed as last or next to last. However, the support entities maintain that actual representation of clients is a primary function. This confusion of purpose needs to be resolved before additional funding is allocated to the support centers.

FUNDING FORMULA FOR THE LOCAL PROGRAMS

WHAT WOULD THE IMPACT OF YOUR PROPOSED FUNDING FORMULA BE ON THE VARIOUS FIELD PROGRAMS THROUGHOUT THE COUNTRY? WOULD THERE BE DRAMATIC UPWARD OR DOWNWARD SHIFTS IN THE FUNDS AVAILABLE TO ANY OF THE FIELD PROGRAMS?

--FOR THE RECORD, WOULD YOU PROVIDE US, WITH REGARD TO EACH OF THE FIELD PROGRAMS, THE AMOUNT THEY WOULD RECEIVE IN 1985 UNDER YOUR FORMULA FOR BASIC SERVICES AND THE AMOUNT AND PERCENTAGE CHANGE FROM 1984?

Due to delays in the delivery of Census Bureau and Bureau of Economic Analysis computer types, we are in the process of generating printouts showing the impact of the Peterson formula on a grantee by grantee basis. Our state level analysis indicates that the formula would result in very substantial increases for the following states:

STATE	1984	1985	PER CENT CHANGE
Arizona	2,186,465	2,335,011	6.79
Delaware	465,097	580,839	24.89
Florida	8,777,712	9,772,455	11.33
Illinois	8,589,644	11,289,300	31.43
Indiana	3,632,210	4,458,824	22.76
Maine	958,613	1,192,324	24.38
Maryland	2,750,551	3,546,016	28.92
Michigan	6,536,230	8,305,236	27.06
Missouri	4,707,304	5,022,555	6.70
Nevada	492,781	554,631	12.55
New Hampshire	536,920	585,233	9.00
New Jersey	4,910,086	6,368,732	29.71
New York	16,079,107	22,319,003	38.81
Ohio	7,599,636	9,847,242	29.58
Oregon	2,047,676	2,186,519	6.78
Pennsylvania	8,819,553	10,770,671	22.12
Rhode Island	710,956	904,692	27.25
Utah	987,842	1,058,610	7.16
Wisconsin	3,060,934	3,549,981	15.98
Micronesia	781,496	868,678	11.16
Pureto Rico	13,483,530	15,150,093	12.36

The largest decreases would occur in Alaska, due to its present exorbitant rate of funding, and North Dakota, Wyoming, Guam and the Virgin Islands whose poverty population dropped significantly between 1970 and 1980.

It is my intention to recommend that the Peterson formula be implemented gradually. I would propose that no program's funding be reduced below 80% of the 1984 funding level or $10 per poor person, whichever is less. Thus with the exception of those few programs now funded above $12.50, no grantee's funding would be reduced by more than 20%. Some grantees would receive a large increase. I am confident that with program infrastructures in place and a new willingness to utilize private attorneys already in place (rather than wait to hire a staff before providing service) that these increases can be absorbed without the fund balance problem of previous years.

Q: YOUR STATEMENT FOCUSES ON THE LARGE PER CAPITA AMOUNT RECEIVED BY ALASKA LEGAL SERVICES. YET, IT IS MY UNDERSTANDING THAT THERE ARE ONLY ABOUT 5 PROGRAMS RECEIVING MORE THAN $13.20 PER CAPITA AND THE OVERWHELMING MAJORITY ARE FUNDED AT BETWEEN $6.80 AND $10.00 PER CAPITA. IS THAT CORRECT?

A: There is one program funded at $13.20--Legal Services of the Virgin Islands--and five programs funded at higher levels. They are:

> Alaska Legal Services - $18.06 (125% of poverty) or $24.26 (100% of poverty)
>
> California Rural Legal Services - $15.01
>
> San Francisco Neighborhood Legal Services - $14.90
>
> Legal Aid Society of Polk County (Iowa) - $14.57
>
> Napa County (California) Legal Assistance - $13.76

The overwhelming majority are funded between $6.80 and $10, 102 of them at $6.80 even. The national average is $7.59, giving some indication of the effect of the current funding formula on the funding available to the lowest funded programs.

Q: Could you, for the record, provide us with the number of programs funded between $6.80 and $7.00 per capita, the number between $7.00 and $8.00, the number between $8.00 and $9.00, and so on up the line?

A:

6.80 - 7.00	119
7.01 - 8.00	82
8.01 - 9.00	47
9.01 - 10.00	20
10.01 - 11.00	9
11.01 - 12.00	4
12.01 - 13.00	3
13.01 - 14.00	2
14.01 - 15.00	2
15.01	1
18.06	1
	288

Q. Your statement indicates you would set aside small amounts for high cost areas and for areas with exceptionally low population densities. For each of those categories, how much money would be set aside and what criteria would be used in distributing the funds?

A. No more than five percent of the total funding amount will be distributed to high cost areas according to the Peterson Formula (LSC Formula Allocation Issue Analysis by David Peterson, October 1983). The following assumptions are based on the Peterson analysis and are used in deriving the appropriate formula for distributing funds:

1) Cost Adjustments should be based on the Index of Comparative Costs based on "Lower Level Budget for Family of Four" (Bureau of Labor Statistics).

2) As the BLS data age, other factors can be used to adjust cost estimates to take advantage of the more recent data presented by these other factors.

3) The major factors to be used in the "update model" are Fair Market Rents (2-3 bedrooms only), Heating Degree Days and "Remoteness".

4) Adjustments made using these factors should be based on the following schedule:

Phase (Year) of Implementation	BLS Cost Estimates	Additional Factors
First	.4 - .5	.5 - .6
Second	.3 - .4	.6 - .7
Third	.2 - .3	.7 - .8

5) All areas with similar or higher costs than San Francisco will receive cost adjustments during the initial phase.

Statistical methods were used to determine the importance of Fair Market Rents, Heating Degree Days and Remoteness in the funds distribution formula. It was found that only 3 factors-- 3-bedroom rents, remoteness and heating degree days--were good indicators of the BLS data. The formula which produced the best estimates of the current BLS data was:

$$\begin{aligned}\text{Need} = {} & 90.19153 \\ & + 33.61039 * \text{Remoteness} \\ & + 0.0010922 * \text{Heating Degree Days} \\ & + 0.0137628 * \text{3-Bedroom rents}\end{aligned}$$

During the first year, cost adjustments will be based on a 50% weighting of the BLS data and a 50% weighting of the above formula. As the BLS data age, the formula will take on more weight as it reflects more recent data.

Congress in the past has expressed concern about extraordinary costs such as travel and telephone associated with delivery of legal services in rural areas. In 1981 the Corporation allocated $1.1 million in annualized funding to rural programs to compensate for additional costs. The effect of funding formulas in recent appropriations bills has been to wipe out this supplement in areas that also experienced high poverty population growth. We would propose to allot $500,000 for this purpose and to meet remaining need through the $20 million Private Bar Delivery portion of our budget request.

No simple formula for distribution of these funds is completely satisfactory. In the past they have been distributed in relation to county population density, identification of sparsely populated areas and a point system for ranking competitive proposals. As stated by Clint Lyons, former Director of Field Services, in a memorandum dated February 23, 1979:

> The national definition of rural which will be adopted for distributing Special Needs funds in 1979 will be that developed in the Sec. 1007(h) study. That definition is counties with a density level of less that 50 persons per square mile. Any definition of "rural" is somewhat arbitrary and the definition adopted is the most widely accepted. This is especially true in light of the limited funds available for distribution and the desire for a maximum impact in affected areas.
>
> In determining the eligible numbers of poor persons in each eligible program service area, the low income in cities or towns of more than 25,000 persons will be deducted from county poor population figures. This will insure that all those included are residing in sparsely populated areas...
>
> The "mark" assigned to each program will be established by the end of March after the census data is collected and the formula for distribution is applied. Individual eligible programs will be notified shortly thereafter to submit relevant applications.

Population density alone is not an adequate indicator of whether program service area populations reside in predominantly urban or rural areas. If a county land area is very large, yet the majority of the population resides in urban areas, use of a density factor alone is misleading. The Census Bureau provided the example of San Bernadino County, California which has a density of 44.6 persons per square mile and a total population of 895,000. Even though the population density is less than 50.0, over ninety percent of its population resides in urbanized areas. Further, there are areas in which higher costs are unavoidable and others where a more prudently designed delivery system, coupled with a lower cost of living, would make operation no more expensive than in other areas.

What we would propose to do is consider competitive applications from programs falling within the lowest quartile in population density and the highest quartile in rural poverty population as a percent of total poverty population. The initial mark against which they will compete would allot as much as seventy-five percent of the funds to programs serving counties whose population density is within the lowest quartile nationally, and twenty-five percent to programs serving counties whose ratio of rural poor to total poor population is in the highest quartile nationally.

At this stage, a more detailed analysis of the peculiarities of each program's delivery mechanisms (e.g., the number of branch or satellite offices currently in operation) could be applied to target need and assess the most appropriate relative distribution of limited funds. An important consideration will be an assessment as to what extraordinary costs are unavoidable and which costs could be avoided by a more efficiently designed delivery system.

Q: The budget justification states: "Because (the affirmative rider) requires 1984 money to be spent according to grants made in 1983, the Corporation is unable to renew multi-year grants made in prior years." As I recall, the proviso referred to annual funding levels, not to the awarding of grants. Can you explain this statement? What grantees, who received multi-year grants prior to 1983, had their funding terminated in 1984 as a result of the proviso?

A: The language of the proviso referred to "total annual funding", and therefore, to funding in 1983 from the 1983 appropriation. As the 1983 budget committed all of the funds appropriated for that year, and as the 1984 appropriation provided for a 14.11 percent increase, to be passed along proportionately to 1983 grantees, etc., the 1984 budget amount was committed to funding at 1983 levels, plus 14.11 percent. Since the multi-year grants made in prior years were not budget items in the 1983 budget, no money was committed to them.

Because Congress earmarked 1984 appropriations leaving no amount to fund the regional training centers, the Corporation was in no position to renew the one-time grants awarded to those five centers in 1981. Therefore, in late October, 1983, the regional training centers were notified that funds were not available for 1984. These grants were one-time grants, to expire at the end of 1983; documentation surrounding the making of these grants strongly indicates that everyone involved in the transaction agreed that the grants would not be renewed when they expired. (Indeed, one of the five did not even apply for refunding.) However, the court interpreted the language of the rider to include among its beneficiaries one-time grantees such as the regional training centers, which are now being funded under court order. The Corporation estimated that grants totalling approximately $23,000,000 could have been included in that interpretation.

Q: If Congress eliminates the affirmative rider, what changes in the way funds are currently being spent would you recommend to the Board?

A: Basic field grants should be distributed pursuant to a multifactor formula based upon current demographic information, not political connections or past favoritism. The transition should be orderly and paced so programs are not unnecessarily disrupted, but a fair distribution of funds should not be contingent on massive increases in LSC's budget. Neither the Corporation nor the Congress should condone a funding formula which allows three times as much to resolve the legal problems of the poor in some localities as in others. For example, there is no justification for allowing legal services programs in Detroit, Chicago, and Miami, $7.63 to serve each poor person within those service areas, while allowing Anchorage, Washington and San Francisco, $25.47, $18.39, and $15.65, respectively.

Q: Why has the Corporation insisted on imposing these policy changes? To the extent specific policy changes do not implement various appropriations provisions, why have they been made? Are they responses to specific abuses identified by Corporation staff and, if so, what supporting evidence is there? Please be specific.

A: It is not accurate to say that each regulation, guideline or instruction represents either a policy change or a response to an abuse. The priority setting regulations and the eligibility regulations were adopted to ensure that recipients had adequate procedures to carry out their obligations under the Act. The lobbying regulations were adopted to correct abuses cited by the GAO and Congressional committees and to implement appropriations riders. The private bar involvement requirement continues and expands upon a policy change that occurred in 1981. The fund balance regulation was adopted to prevent a repeat of the problem we experienced in this area.

Q: WHEN THE CORPORATION DEVELOPS NEW GUIDELINES AND REGULATIONS, WHAT STEPS WILL IT TAKE TO EVALUATE AND MINIMIZE THE NEW PAPERWORK REQUIREMENTS BEING IMPOSED ON GRANTEES? HAVE THERE BEEN ANY EFFORTS, IN THE DEVELOPMENT OF THE NEW REGULATIONS, TO DEVELOP A COST-BENEFIT ANALYSIS OF THE ADDITIONAL PAPERWORK BURDENS?

A: Differing reporting requirements entail varying levels of effort among programs which complicates efforts to quantify the degree of their effect. However, the Corporation includes as a part of its evaluative process the paperwork requirements imposed upon recipients when proposed regulations or guidelines are published and comments are invited. Recipients have always been welcome to direct their comments to the issue of perceived paperwork burdens imposed upon them by new regulations or guidelines.

The Legal Services Corporation will re-examine, and where feasible attempt to reduce reporting requirements for recipients, as discussed in the Senate report and consistent with the Corporation's goal to manage responsibly this legal services program. Cognizant that more requirements may not mean better requirements, the Corporation is also aware that existing reguations have in some circumstances proven not to be sufficient. In fulfilling LSC's role, there will inevitably come change and the need for more reliable information.

LSC acknowledges that recipients reporting requirements have changed over the past two years and has actively encouraged and provided funding to programs to implement and to expand automation of legal, financial and other functions in support of growing needs and efficiencies. In fact, the Corporation has dedicated over $500,000 for these purposes to programs between 1983 and 1984.

NEW REGULATIONS, GUIDELINES, AND INSTRUCTIONS FOR GRANTEES:

Q: THE CONFERENCE REPORT ON THE FISCAL 1983 CONTINUING RESOLUTION (P.L. 97-377), IN EXPLAINING THE "AFFIRMATIVE RIDER" FIRST IMPOSED THAT YEAR, SPECIFICALLY DIRECTS THAT THE CORPORATION IS EXPECTED TO MAKE GRANTS UNDER THE "SAME TERMS AND CONDITIONS" AS IN 1982. OBVIOUSLY, THERE IS AN IMPLICIT EXCEPTION FOR NEW REGULATIONS REQUIRED TO ENFORCE VARIOUS APPROPRIATIONS RIDERS. DO YOU BELIEVE THAT ALL THE NEW POLICY CHANGES DEVELOPED BY THE CORPORATION OVER THE LAST 16 MONTHS, SUCH AS THOSE PERTAINING TO CLIENT ELIGIBILITY AND CASE PRIORITIES, COMPLY WITH THOSE INSTRUCTIONS?

A: Yes.

Delivery Research and Experimentation

LSC has allocated $4.8 million in fiscal year 1984 for Delivery Research and Experimentation.

1. Of that amount, how much was allocated for the private legal clinic projects?

$1.5 million

2. To date, how much has been committed?

$263,700

3. Recently you testified before Congress that one private Legal Clinic Project may be funded in May with the proposed starting date in June.

Jacksonville, Florida $134,950 to begin late June.

4. To date what other projects have been funded and when are their anticipated starting dates?

Des Moines, Iowa $128,750 to begin late June. In addition, bids are currently being received for contracts in Laredo, Texas; Fort Smith, Arkansas; Pittsburgh, Pennsylvania; and Portland, Oregon. Those projects should be funded before the end of August.

Litigation Expenses

The position of LSC in the lawsuit brought by the Regional Training Centers was that refunding was denied because LSC had insufficient funds. Yet, LSC had a carry-over for FY 1983 of $5.7 million. It's our understanding that you're continuing litigation in this matter.

1. Since you do have sufficient funds, what is the basis for continuing litigation?

The issue of "insufficient funds" was merely one of several issues presented by LSC in defense of the civil litigation brought by four (4) of the Regional Training Centers (R.T.C.'s). That particular contention was raised by Gregg Hartley, former Director of O.F.S., in his letter of October 26, 1983, in light of all of the factors then known to him and the Corporation concerning the financial status of LSC and the proposed appropriations bill for FY 1984. Mr. Hartley believed it was necessary at that time to invoke the provisions of Grant Condition #12 of those one-time grants to prevent any future challenge based upon the principles of waiver and/or estoppel regarding said condition.

During the course of this litigation, LSC has vigorously asserted defenses based on the following:

a) Public Law 98-166 does not require LSC to fund the R.T.C.'s in question under the express language of said statute or its "funding formula."

b) The R.T.C.'s are not the type of grantees required to be funded by LSC under Pub. law 98-166.

c) The R.T.C.'s in question were not funded in 1983 from the 1983 appropriation. All monies received by same were from FY 1981 and FY 1982 funds. Thus, Public law 98-166 is inapplicable (if it did apply, their "funding level" would be zero.)

d) The grants in question expired on December 31, 1983 by their own express, written terms.

e) The grants in question were "one-time" grants under the LSC Act, and did not affect the R.T.C.'s "annualized funding levels," which is the critical standard.

f) Under the express, written terms of the "one-time" grants, the R.T.C's were not entitled to so-called "Section 1011" rights under the LSC Act.

These defenses were fully briefed and argued before a panel of three judges in the U.S. Court of Appeals (D.C. Circuit) on Friday, May 18, 1984. The case is now "under advisement" by that Court.

2. How much have you spent on attorneys' fees in this case and how much do you anticipate spending?

a) As of June 4, 1984, LSC has expended $27,757.75 in attorneys fees regarding litigation in the U.S. District Court (District Court Judge Parker) and the Court of Appeals.

b) At this time, it is difficult to anticipate the future expenses that may be incurred until a ruling is issued by the Court of Appeals.

Questions Submitted by Senator Hollings

Question:

On February 6, 1984, LSC adopted, on your recommendation, a consolidated operating budget (COB) allocating the entire 1983 carry-over of $5.7 million to budget areas controlled by staff. This resulted in the increase in these budget areas over FY 1983 expenses of over 90%, yet the increase for field programs was only approximately 14%.

1. What justification is there for this disparity?

2. How is that action consistent with your FY 1985 budget request seeking an increase for field programs?

3. What assurances do we have that, without a specific mandate from Congress, any increased appropriation to LSC will benefit field programs?

Answer:

The Corporation's fiscal year 1983 fund balance of $5,702,499 was allocated in its entirety to programs in fiscal year 1984. Of this amount, $1,217,413 from the Support for the Provision of Legal Assistance budget category, our administrative overhead budget, will be spent on the Provision of Legal Assistance budget category, our program and grant budget.

This use of overhead funds for the program portion of our budget was made possible by cost savings throughout the year, primarily through lapses in filling vacant positions and associated reduced levels of travel and day-to-day administrative expenses.

The two principal beneficiary programs were "Program Maintenance and Improvement" and "Regional Training Centers". The additional funds allocated to "Program Maintenance and Improvement" are being used in fiscal year 1984 to continue training efforts, promote technological improvements in field programs, and to assist field programs in overcoming unanticipated problems.

The budget request provided for an $18.9 million increase for basic field programs. The request was made pursuant to a decision by the Board to seek a substantial increase for the basic field programs. The Corporation has not requested that the elderly institutionalized and handicapped program, the emergency special needs funds, the technical improvements money or the private bar initiative be funded at the expense of the field programs.

FUNDING FORMULA

LAST YEAR, CONGRESS ADOPTED A FORMULA FOR THE ALLOCATION OF INCREASED FUNDS TO FIELD PROGRAMS. THIS FORMULA ADDRESSED THE PROBLEMS OF DISPARATE FUNDING, APPLIED 1980 CENSUS DATA AND PREVENTED THE HARMFUL REDUCTION OF FUNDS FOR PROGRAMS. YOUR REQUESTS FOR FY 1985 DESCRIBED THE FUNDING LEVEL ON " EQUALIZED BASIS" FOR CURRENT PROGRAMS BUT FAILED TO PROVIDE SPECIFIC INFORMATION AS TO HOW LSC WOULD ALLOCATE SUCH FUNDS. THE FORMULA ADOPTED IN THE 1984 APPROPRIATION ADDRESSED THE CONCERN THAT WE'VE HAD.

1. WHY SHOULD WE REJECT THIS APPROACH WITHOUT A SPECIFIC PROPOSAL FROM YOU?

2. WHY DID YOU NOT PRESENT A SPECIFIC FUNDING PROPOSAL SO WE COULD EVALUATE WHETHER IT ADEQUATELY ADDRESSES OUR CONCERN?

In my testimony I did present a specific funding proposal, the funding formula recommended to the Corporation by Dr. David Peterson. The Board has not taken final action on it and we are interested in the comments of affected grantees and Members of Congress on the proposed formula.

You should reject the formula included in the 1984 appropriation, as revised in 1985 by your subcommittee, because it allocates pitifully little of its funds on the basis of the 1980 census--only about 12.1% of the funds-- and none on the basis of more recent demographic data. The bulk of the funds are spent in maintaining grantee funding at levels established on the basis of 15 year old 1970 census data and increasing the funding established on that basis by 5%. The result of increasing every program by 5% is to hold down the funding levels of the lowest funded programs at $7.63 per poor person when they would have been $7.82 without the 5% provision.

More specifically, there are six reasons to prefer the Peterson formula over that in H.R. 5712:

1. H.R. 5712 guarantees every legal services program $6.83 for every poor person counted in the 1970 census. (105% of 105% of 1982 funding which was $6.20 per poor person counted in the 1970 census). It does so despite the fact that the number of poor people in many areas fell dramatically between 1970 and 1980:

Virgin Islands	-46.1%
West Virginia	-24.2%
Mississippi	-22.8%
Arkansas	-18.6%
Louisiana	-17.5%
North Dakota	-17.0%

2. H.R. 5712 guarantees every legal services program 105% of its 1983 funding even if that funding was two or three times the national average ($7.59 in 1984). Nationally $18 million would be allocated in accordance with pre-1982 discretionary decisions to fund LSC programs above the "minimum access" level, most of them made by O.E.O. in 1966.

PER CAPITA FUNDING

	1984	H.R. 5712
Alaska Legal Services	$24.26	$25.47
California Rural	$15.01	$15.76
San Francisco	$14.90	$15.65
Polk County (Iowa)	$14.57	$15.30

3. Despite massive shifts in the poverty population since 1970, H.R. 5712 would only allow 12.1% of its funds to be used to augment the funding of those programs serving areas in which the poverty population grew substantially between 1970 and 1980. None are allocated on the basis of data more recent than 1980.

In contrast, the Peterson formula allocates no funds on the basis of the 1970 data. It would allocate 70% of LSC funds on the basis of the 1980 poverty count and the balance on the basis of more recent data. Using the approach of H.R. 5712 precludes doing justice to those states in which the poverty population grew dramatically between 1970 and 1980:

Nevada	+ 57.5%
Hawaii	+ 31.9%
Arizona	+ 25.5%
Idaho	+ 27.3%
Utah	+ 22.6%
California	+ 22.2%
New Jersey	+ 20.1%

4. The Peterson formula also would give consideration to the changes in the location of the poor that have occurred since the 1980 census.

The 1980 census data (based on 1979 incomes) can give a very misleading picture of current poverty conditions. For example, it showed the number of poor persons falling by 24.2% in West Virginia. But since 1980 economic conditions in West Virginia have significantly declined in relation to the Nation as a whole. West Virginia has an unemployment rate of 16% (against a national average of 8.1%), while the number of jobs in the state fell by 9.5% as the job market grew nationally by 3.5%. The Peterson formula would allocate 7.5% of the funds according to job lag (slow growth in the number of jobs) and 2.5% according to unemployment rates. In twenty states the number of employed persons dropped between 1979 and 1984 despite a national growth rate of 3.5%. The largest declines were in Michigan (-10.3%). West Virginia (-9.5%), Indiana (-18.8%), Iowa (-8.3%), Ohio (-7.3%), Illinois (-6.6%) and Oregon (-4.6%).

The figures on job lag dramatically illustrate the changes since the 1980 census even within a single state. In Midland, Texas, the number of jobs grew by 45.4% between March 1979 and March 1984 while the number fell 5.8% in Sherman, Texas. In Lowell, Massachusetts, the number of jobs grew by 22.3% while falling by 4.2% in Worcester. It is unfair to the poor clients of Legal Services programs to ignore the 15.6% drop in jobs in Peoria, the 16.3% drop in Duluth, tne 17.2% drop in Waterloo, Iowa or the 18.1% decline in Johnstown, Pennsylvania.

5. The Peterson formula would correct allocations for the Southern bias inherent in the Census poverty count which uses the same nominal income level for the poverty count nationwide despite the fact the purchasing power of each dollar in Tuscaloosa, Alabama is much greater than a dollar in San Francisco or Seattle. The Peterson formula deals with this problem by allocating 20% of its funds on the basis of the number of persons whose income is the very low amount of $5,000 and who must devote over 34% of their income to housing. He also proposes extraordinary cost adjustments for those places like San Francisco, Seattle, Alaska and Hawaii with very high costs. The extraordinary adjustment would give Hawaii 16% higher funding than under present law while reducing that of Alaska which now receives funding at a rate 300% the national average but whose cost of living is only 150% the national average. The formula as a whole would recognize the higher cost of necessities like housing in places like New York and California.

6. H.R. 5712 perpetuates the inequalities in legal services program funding on the assumption that equality will eventually be achieved at $13.57. Last year the target was $13. Congress should consider whether it intends to raise funding to the $400 million level required to achieve funding at $13.57 per poor person. If not, then H.R. 5712 would increase the funding of the very highest funded programs while holding others below the national average with no hope of ever achieving equality.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Regulations

On February 24, 1984, the Corporation proposed regulations purporting to implement the restrictions in Public Law 98-166. On March 27th, I joined Senators Rudman, Eagleton, Weicker, Kennedy and Stafford in a letter protesting that the proposed regulations had "gone far beyond congressional intent" and "clearly exceeded explicit legislative authority."

1. What is the current status of the regulations?

The lobbying regulations were revised on the basis of comments, including revisions based upon all of the suggestions you made, were adopted by the Board in revised form, and were published in the Federal Register on May 31, 1984. Their effective date was July 2, 1984.

2. Do the regulations permit administrative representation of eligible clients in rulemaking when the rulemaking directly affects the client's legal rights and responsibilities? If no, why?

Yes, [see Section 1612.5(f)(2)(iii) and Section 1612.6(c)].

3. Do the regulations permit administrative representation in response to an official request? If no, why?

This question is not addressed in Part 1612. The regulations do permit specifically a response to requests for testimony or information based on a program's expertise [See, e.g., 1612.5(a)(1)(i) and 1612.6(b)]

4. Do the regulations prohibit a program from consulting with persons not employed by the program when drafting a communication permitted under the language in the 1984 appropriations bill? If no, why?

No, the regulations do not prevent such consultation except when the persons to be consulted are participating in a coordinated effort to influence legislation.

NATIONAL CLIENTS COUNCIL

This Senator yields to no one in supporting adequate legal services for the poor. At the same time, I have steadfastly opposed, as Chairman and Ranking Minority Member, excesses and abuses in this program. Accordingly, I was outraged by the reports in the press of the expenditures of the former executive director of the National Clients Council.

1. Is it correct that an audit found that $10,000 was used to provide rental cars between his Washington office and his surburban Maryland home, as well as $177.90 for him and his wife for a two-night stay at a hotel near his office?

Since I formally recused myself from all matters relating to the National Clients Council (NCC) pending a ruling by an independent Hearing Officer, I cannot supply exact figures in response to this question. However, the preliminary determination notice denying refunding to NCC indicated that:

> NCC made improper use of LSC funds by (a) providing excessive salary advances to the Executive Director; (b) paying unreasonable and unnecessary commuting expenses, meals and lodging for the Executive Director in the city of his residence and principal office, and (c) failing to require staff, Board, and others to verify that funds advanced for travel expenses were so used.

At the time of the preliminary determination, the approximate dollar amount for rental cars was $8,600 for the first nine (9) months of 1983 and the $177.90 was for accommodations at the General Scott Inn in Washington, D.C. for the Executive Director and his wife.

2. Have you been able to ascertain any justification for such expenditures?

Prior to issuing the preliminary determination notice, the Corporation did not discover any justification for the expenditures noted in question 1. At present, the matter of denying refunding to NCC is pending before an independent hearing examiner. The preliminary determination to deny refunding has been contested by NCC. Because of my recusal, I am not privy to any asserted justification for such expenditures which may have been raised at the administrative hearing.

3. What steps has the Corporation taken to ensure that your grants are not abused in the future?

In order to ensure that LSC grants are not abused in the future, the Corporation has established an Office of Compliance and Review to investigate allegations of abuses by its grantees. The Corporation has also added personnel to its audit division in an effort to curb financial abuses by its grantees. In addition, the Corporation continues, on a routine basis, to monitor and provide for independent evaluations of programs supported in whole or in part by the Corporation. However, under the presumptive refunding provision of the LSC Act and the mandatory funding formula attached to our appropriation, LSC's ability to fulfill its fiduciary responsibility to the taxpayer in a fair and expeditious manner when such abuses are uncovered is hindered.

Based on documented violations of the law, the Corporation made preliminary determinations to deny refunding to four (4) grantees in 1984. In addition to NCC, notice was sent to the Western Center on Law and Poverty, Central Louisiana Legal Services, and Tri-Parish Legal Services. Despite these determinations, the Corporation has had to continue to fund the programs while expensive and time consuming hearings are held. For example, the proceedings in the NCC matter are entering their sixth month. During that period, the Corporation has funded NCC at $43,725 per month, while expending $290,575 or about half the annual grant in dispute to prosecute the administrative hearing. A similar case involving the Western Center on Law and Poverty, which was denied refunding after the General Accounting Office found that they had spearheaded an illegal campaign to defeat Proposition 9, a California taxcutting initiative, has ended up in federal court and will cost the taxpayers hundreds of thousands of dollars.

2. How many meetings of the Board were held between January 10, 1977, and January 10, 1981, and how many of them were in Washington? (See attachment 2)

7 out of 17 Board meetings held in Washington

25 out of 40 Committee meetings held in Washington

DATE OF MEETING	LOCATION	BOARD/COMMITTEE
1/14/77	New Orelans, Louisiana	Board
5/13/77	Window Rock, Arizona	Board
6/2/77	Washington, D.C.	Facilities
7/6/77	Arlington, Virginia	Regulations
9/14/77	Chicago, Illinois	Regulations
9/30/77	Washington, D.C.	App. & Audit
10/7-8/77	Arlington, Virginia	Board
11/10/77	Chicago, Illinois	Regulations
12/8/77	Washington, D.C.	App. & Audit
12/8/77	Washington, D.C.	App. & Audit
2/3/78	Chicago, Illinois	Personnel
3/2-3/78	Washington, D.C.	Board
4/6/78	Omaha, Nebraska	Personnel
4/6/78	Omaha, Nebraska	App. & Audit
4/6/78	Omaha, Nebraska	Regulations
6/19/78	Washington, D.C.	App. & Audit
7/5/78	Arlington, Virginia	Regulations
7/6/78	Arlington, Virginia	Board
9/18/78	Washington, D.C.	Regulations
9/19/78	Washington, D.C.	Provisions
9/25/78	Washington, D.C.	Personnel
9/28/78	Washington, D.C.	App. & Audit
10/19/78	Washington, D.C.	Board
11/13/78	New Oreans, Louisiana	Provisions
11/15/78	Washington, D.C.	App. & Audit
12/12/78	Washington, D.C.	Board
1/26/79	Arlie, Virginia	Board
2/16/79	Washington, D.C.	Board
2/16/79	Washington, D.C.	Provisions
3/21/79	Boston, Massachusetts	Provisions
3/22/79	Boston, Massachusetts	Board
4/5/79	Washington, D.C.	Pres. Search
4/19/79	Chicago, Illinois	Pres. Search
5/2/79	Washington, D.C.	Pres. Search
5/15/79	Arlington, Viginia	App. & Audit
5/16/79	Arlington, Viginia	Pres. Search
5/19/79	Albuquerque, New Mexico	Provisions
5/31/79	Washington, D.C.	Pres. Search
7/20/79	Los Angeles, California	Provisions
7/26/79	Washington, D.C.	Operations
7/27/79	Washington, D.C.	App. & Audit
9/6/79	Washington, D.C.	Operations
9/6/79	Washington, D.C.	App. & Audit
9/7-8/79	Washington, D.C.	Board
11/12/79	Washington, D.C.	App. & Audit
11/12/79	Washington, D.C.	Provisions

12/6-7/79	San Francisco, Califronia	Board
3/28/80	Denver, Colorado	Provisions
5/1-2/80	Memphis, Tennessee	Board
6/9/80	Washington, D.C.	App. & Audit
6/12/80	Boston, Massachusetts	Operations
6/19/80	Washington, D.C.	Provisions
6/20/80	Washington, D.C.	Board
7/21/80	Omaha, Nebraska	Provisions
8/21/80	Bolton Valley Resort, VT	App. & Audit
9/5-6/80	Washington, D.C.	Board
10/14/80	Washington, D.C.	Operations
11/13/80	San Juan, Puerto Rico	Board
11/18/80	Washington, D.C.	App. & Audit
12/4/80	New Orleans, Louisiana	App. & Audit
12/5-6/80	New Orleans, Louisiana	Board

Board Nominees

Please list for the record all the persons nominated by President Reagan to the Board of Directors and the action taken on those nominations.

The President has nominated two states of nominees. on February 25, 1982, he nominated:

Robert S. Stubbs, II
William J. Olson
William F. Harvey
George E. Paras
Marc Sandstrom
Howard H. Dana, Jr.
Clarence V. McKee
Annie L. Slaughter
Harold R. DeMoss
William l. Earl

These nominations were withdrawn on December 8, 1982.

On March 19, 1984, a full state of eleven nominations was sent to the Senate.

William Clark Durant III
Paul B. Eaglin
Pepe J. Mendez
Thomas F. Smegal Jr.
Basile Joseph Uddo
Michael B. Wallace
Hortencia Benavides
Leaane Bernstein
Lorain Miller
Claude Galbreath Swafford
Robert A. Valois

SUBCOMMITTEE RECESS

Senator RUDMAN. Mr. Bogard, we thank you for your appearance this morning, and we will stand in recess until the 25th when we will hear testimony from the Justice Department.

[Whereupon, at 10:55 a.m., Wednesday, May 2, the subcommittee was recessed to reconvene at the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1985

FRIDAY, MAY 25, 1984

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m. in room SD–116, Dirksen Senate Office Building, Hon. Paul Laxalt (chairman) presiding.

Present: Senators Laxalt, Rudman, DeConcini, and Chiles.

DEPARTMENT OF JUSTICE

STATEMENT OF WILLIAM FRENCH SMITH, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

ACCOMPANIED BY:

- KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
- MS. LOIS HAIGHT HERRINGTON, ASSISTANT ATTORNEY GENERAL
- CHARLES R. NEILL, CONTROLLER
- ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE
- NORMAN A. CARLSON, DIRECTOR, FEDERAL PRISON SYSTEM
- JOHN C. LAWN, ACTING DEPUTY ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION
- THOMAS A. HUGHES, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

INTRODUCTION OF WITNESSES

Senator LAXALT. We will be in order.

This morning we will complete our fiscal year 1985 hearings by receiving testimony from the Department of Justice. Appearing for the Department is Attorney General William French Smith.

General, once again it is a pleasure to welcome you here. I know we are running a little late, but that is due to the fact that I placed a couple of calls this morning. I am delighted to have you here. I would like to have you introduce your colleagues, if you will, and then proceed to summarize your statement in the usual manner. Your full statement, then, will be included in the record as if fully read.

Do any of my colleagues have a statement to make preparatory to the General testifying?

[No response.]

Senator LAXALT. May the record indicate that we have present Senators DeConcini, Chiles and Rudman.

You may proceed, General.

GENERAL STATEMENT

Mr. SMITH. I think everybody here is known. Lois Herrington, she is an Assistant Attorney General, and Kevin Rooney, Alan Nelson and Norman Carlson, Bureau of Prisons.

I am here today to support the 1985 budget request of the Department of Justice. This budget is a continuation of our earlier successful efforts to enhance the law enforcement resources available to this country. We have made significant progress toward improving the quality and quantity of law enforcement in the past 3 years.

Although I am here to discuss the request for 1985, it is important to discuss the context in which the request was formulated, in terms of our present aggressive law enforcement efforts.

Our efforts to improve law enforcement coordination, both among the Federal activities and with State and local agencies, are continuing. Our request for resources takes into consideration the realization that a balanced distribution of resources among the various components of the criminal justice system is necessary to ensure effective operation, and we have continued our efforts to increase the Federal presence in the cities and towns of this Nation to combat violent and drug-related crime. Additionally, our Federal law enforcement agencies have increased their efforts in the training of local enforcement and corrections personnel.

Aside from direct efforts against crime, the need to improve the coordination of the many Federal, State and local organizations involved in combating the increasingly sophisticated criminals led us to search for new methods of coordination. The Law Enforcement Coordinating Committees, composed of Federal, State and local law enforcement officials in Federal judicial districts throughout the country, are an active part of this coordination effort. We are requesting an increase of resources to provide additional assistance to these valuable forums. The full level of resources requested for this effort is critical if we are to meet the needs of coordinating our Federal, State and local battle against crime as well as supporting the congressionally-mandated victim/witness program in U.S. Attorneys' Offices.

DRUG TRAFFICKING AND ORGANIZED CRIME

The joint efforts of the Federal Bureau of Investigation and the Drug Enforcement Administration in the fight against drug trafficking continue to expand. In 1983, the FBI was involved in more than 1,600 drug-related investigations of which nearly 600 were conducted in cooperation with DEA.

The Organized Crime Drug Enforcement Task Forces, established as an interagency coordination effort in 1983, have initiated more than 595 cases and produced more than 470 indictments against a total of nearly 2,400 defendants. Of these defendants, 261 have been charged under the racketeer influenced and corrupt organizations statutes, and 134 have been charged under the continuing criminal enterprise statutes. To date, convictions in these cases exceed 600. These impressive results and the continued commitment of this administration to the organized crime drug enforcement effort have prompted the request for the establishment of a thirteenth Regional Drug Task Force to be headquartered in Miami, Fla. The new task force will cover Florida, Puerto Rico and the Virgin Islands.

LEGISLATIVE INITIATIVES

The Department has worked with this Congress to address such critical issues as reform of our Federal criminal and immigration laws. However, the current lack of progress on authorizing legislation has prevented us from launching the programs proposed under the Justice Assistance Act. We already have the necessary 1984 appropriation to begin this work but the spending of the funds is specifically prohibited until the Congress agrees on an authorization. The Department will work with the committee to see if some accommodation can be reached so that both the 1984 and the proposed 1985 Justice Assistance programs can move forward. On the matter of immigration reform, the Committee is fully aware of the issues that need resolution and how much more effective our enforcement efforts would be if the Department had the requested legislative authorities.

OTHER ACCOMPLISHMENTS

In a continuing effort to protect the public treasury from fraud and abuse, the Department of Justice collected more than $475 million owed to the Government in 1983, more than twice the $200 million collected in 1982.

These are but a few of the significant accomplishments of the past year. The fiscal year 1985 budget requests the new resources necessary to continue to expand Federal law enforcement efforts and to realize still more progress. These prior efforts have been successful in many ways because of the support given by this committee and the Congress; the future success of law enforcement efforts are dependent on the same formula of mutual understanding of the problems we face and support for the solutions we offer.

The President's request once again includes a significant resource increase for Federal law enforcement. I am glad today to present to the Congress several initiatives to provide both immediate and longer-term benefits to the American people.

BUDGET REQUEST

Mr. Chairman, I am requesting today a budget of $3.67 billion and 59,465 positions. This is a net increase of 3,368 positions and $229 million over the anticipated 1984 resource level.

Officials from the Department have appeared before the committee to answer specific questions about the FBI and the DEA. At this time, I would like briefly to outline the most significant features of this request.

These features include: funding for a major Southern Border enforcement initiative; continued expansion of the war on organized crime and drug trafficking; a significant litigative commitment to Internal Revenue Service enforcement efforts; foreign counterintelligence measures: additional Federal prison construction and the further application of modern technology to the operation of the Federal justice system. In formulating this request, we have again recognized the interrelationship of the various components of the system which include investigations, prosecution and corrections, as well as Federal assistance to States and localities. The request is a continuation of this administration's approach of applying resources in a balanced manner across the justice system.

INCREASE FOR BORDER CONTROL

The request before you addresses the need for this Nation to control its borders. A program increase of 1,000 positions and $43.6 million is requested for a comprehensive enforcement initiative to deal with the significant flow of illegal aliens across our borders. Apprehensions of illegal aliens in 1983 were recorded at the highest levels in history. The proposed enhancements to gain control over our borders are not tied to new legislation but are directed toward the enforcement of existing laws. We believe the additional resources will enable INS greatly to improve the effectiveness of border enforcement efforts. This enhancement is considered a significant first step toward controlling illegal immigration. Comprehensive reform legislation is still required to meet this most important national problem.

INCREASE FOR ORGANIZED CRIME DRUG ENFORCEMENT

This request also addresses the need to expand the organized crime drug enforcement initiative to establish a 13th task force to give more emphasis to the needs of Florida, Puerto Rico and the Virgin Islands. In addition, 1985 is the year in which we propose that the task force effort be directly financed by the appropriations of the participating agencies. This decentralization of financing in no way diminishes the commitment to maintain a coordinated effort. Rather, with 2 years of experience, we believe the necessary mechanisms of control have been established, a high level of cooperation in the field has been achieved, and direct financing will simplify the administration of the program.

FBI INCREASE FOR ORGANIZED CRIME

In addition to organized crime drug enforcement program increases, the FBI's Organized Crime program would be increased by 315 positions and $12.3 million in 1985. These resources would be available for FBI investigations of traditional and non-traditional organized crime enterprises and for FBI drug trafficking investigations separate from Regional Drug Task Force investigations.

TAX LITIGATION INITIATIVE

In conjunction with our emphasis on interagency cooperation, we have recognized the need to support the efforts of the Internal Revenue Service. A major tax litigation initiative totaling 150 positions and $8.3 million is included in the 1985 budget requests for the Tax Division and the United States Attorneys. The tax initiative will focus on new measures to combat the recent growth in abusive tax shelter promotions; to curb the illegal activities of the tax protester movement (protester returns have increased fourfold since 1980), and to collect delinquent taxpayer accounts, which have more than doubled in number and value in the last 4 years, so that nearly $8 billion is now outstanding.

FOREIGN COUNTERINTELLIGENCE

In the interest of domestic security, we have addressed the need to strengthen our capability to counter the efforts of hostile foreign intelligence services operating within the United States. This request represents the second successive infusion of staff and funds for the FBI foreign counterintelligence program.

FEDERAL PRISON SYSTEM EXPANSION

Our efforts to increase the capacity of the Federal Prison System are continuing. A year ago we reported to this committee that Federal prisons had nearly 24 percent more inmates than their rated capacity. Since that time, the Federal prison population has increased from approximately 29,700 to 31,800. We are currently operating at 30 percent over rated bedspace capacity. However, planned expansion is expected to reduce the overcrowding rate to approximately 13 percent.

Senator LAXALT. When would that occur, General, do you know? Norm, do you know?

Mr. SMITH. That would occur, really, when we have on line the present construction and present plan to improve not only the existing space but the new prison facilities. As you know, we have one facility planned in the Northeast United States, one in the Southeast already funded, and we are asking for additional funding for a new one in the Northeast. This along with renovation projects will total about 5,000 new bedspaces, and that should get us down to the 13 percent.

The average daily population of the Federal Prison System already exceeds the level projected in our 1985 estimates. In addition to prisoners housed in Federal facilities, we will continue to maintain over 3,000 sentenced Federal prisoners per day in contract facilities.

We have requested $74.5 million for Federal prison expansion and modernization. This includes funds for construction of a 500-bed medium security level Federal correctional institution in the Northeastern United States. Funding is also requested for planning and site acquisition of a 500-bed medium security level FCI in the Southeastern United States, construction of new housing units at 7 existing Federal prisons with 758 new bedspaces, and funds for modernization and rehabilitation projects throughout the Federal prison system.

In addition, the Federal prison system plans to activate the Phoenix, Ariz., FCI in 1985. This activation, in conjunction with several other new housing units, which were funded primarily by the organized crime drug enforcement appropriation in 1983, will add 1,262 bedspaces in 1985. This request seeks 361 positions and $12.2 million for activation of these facilities.

ADP AND TELECOMMUNICATIONS

The 1985 request continues to provide new funding for application of modern technology to the Federal justice system.

Approximately $65 million is being requested for a number of technical improvement projects across the Department. This funding will allow the expansion of the FBI's field office information management system, the redesign of the National Crime Information Center system, improvements to DEA's enforcement and intelligence information support systems, development of a new Justice telecommunications network, a new criminal enforcement research and development initiative under the FBI, expanded automated litigation support systems, and redesign and integration of the Department's automated administrative and financial support systems.

LAW ENFORCEMENT COORDINATING COMMITTEES AND VICTIM/WITNESS COORDINATORS

Additional resources will provide a means to both institutionalize and enhance the long-term effectiveness of the Law Enforcement Coordinating Committee initiative and improve the level of service the Department renders to victims and witnesses associated with Department cases. Funds are requested to provide 94 positions to place a coordinator for the Law Enforcement Coordinating Committee and the victim/witness program in U.S. attorneys' offices. This new emphasis on victims and witnesses not only reflects the concerns of Congress but is also indicative of the priorities of this administration. This is an effort to ensure that victims and witnesses are given the level of attention and consideration that is long overdue by the Federal criminal justice system.

I might say at this point that the House cut this request in half for no discernible reason. We are asking for coordinators at each of the 94 districts. We think that is critical, not only to the development of the Law Enforcement Coordinating Committee program, but also in connection with the victim/witness program. We earnestly request that what the House cut be restored. As I say, it is a relatively small amount.

There is no rationale that we can find that can justify this cut, and we think that very definitely it should be reinstated.

LITIGATING DIVISION INCREASES

Other major increases for the Department's litigating divisions include continued enhancements for civil rights enforcement, additional resources for an expanded environmental enforcement program, and increases to fund the growing civil litigation workload. These resources will be used to support civil rights prosecutions, address referrals under the Clean Air, Clean Water, and Safe Drinking Water Acts, as well as defend the Government's interests in the Washington public power supply system cases.

QUANTICO EXPANSION

As a final item I would like to highlight the proposed expansion of the physical plant at the FBI Academy in Quantico, Va. The 1985 budget contains $13 million to construct a new facility to house jointly the FBI's headquarters engineering section and the DEA's research and engineering program. This relocation of the research and engineering components will facilitate the coordination of these two operations and is indicative of the close working relationship that is evolving between the FBI and the DEA since the granting of concurrent jurisdiction for narcotics enforcement to the FBI in January of 1982.

PROGRAM DECREASES

The 1985 budget request does not include funding for juvenile justice grants, regional intelligence sharing grants, and the U.S. trustee pilot program. These reductions total $85.7 million. Authorization for the U.S. trustee pilot program terminates on September 30, 1984.

PRESIDENT'S PRIVATE SECTOR SURVEY PROPOSED REDUCTIONS

Another reduction has come about through implementation of the President's private sector survey on cost control's recommendations, the Grace Commission, which includes streamlining the management-related functions at INS. This would result in a savings of 150 positions and $4.8 million in INS by eliminating unnecessary field management layers in central and regional offices.

In fiscal years 1981 to 1983, the reported use of resources required for the FBI's white-collar crime program has been less than the amount allocated in those years. Some of this underreporting may be caused by investigations of criminal activities which can be classified under more than one type of crime. Major criminal enterprises may be simultaneously involved in white-collar crime, narcotics-related crime, and organized crime. The classification that we give the investigation of such an enterprise, therefore, may not be as clear as our accountants and statisticians would like. The administration is proposing to adjust this allocation downward by 185 work-years and $7.1 million, which we believe wlll more accurately reflect our investigative activities.

This new level is still higher than the actual use rate in 1983 and, in fact, allows for a growth of 161 work-years and $24.8 million over the 1983 actual levels. Given the increases in other areas of the FBI's budget in 1984 and 1985, we believe that the level of effort applied in the FBI's white-collar crime program will increase this year and next year, and approach full utilization of the resources provided for this program.

The remaining reductions include $2.5 million for the National Institute of Corrections relating to funding provided in 1984 for a study to expand and improve literacy training for violent offenders and behavioral studies on released prisoners, a decrease of 55 positions and $2.8 million in the Antitrust Division which reflects savings expected from the expanded use of automated litigation support systems and increased emphasis on economic analysis in the early stages of market structure investigations, a decrease of 65 positions and $3.6 million for DEA related to additions made by the Congress in 1984 which have been more than offset by the administration's decision to add 87 positions and $10 million to DEA's programs which will further the administration's war on drug trafficking, and a reduction of 102 positions and $1.7 million for the FBI's fingerprint identification program. This is a return on the multimillion-dollar investment the administration has recently made in automation of the FBI's Fingerprint Identification Division.

I believe our programs are promising and, while directed at combating all forms of crime, will prove especially fruitful in attacking the problems of illegal immigration, drug trafficking, organized crime, and tax evasion. As with the 1984 budget, this request represents substantial new expenditures, but the total cost is modest in terms of what crime is costing our economy and law-abiding citizens.

Thank you, Mr. Chairman.

PURSUIT OF TAX EVASION CASES

Senator LAXALT. Thank you.

General, as your statement indicates, you have requested substantial resources in the tax and the U.S. attorneys' criminal program to pursue civil and criminal tax cases. Your testimony states that the reason for this is cases of tax evasion, which are substantially on the increase. Do you or any of your people have any reasoning, any rationale as to why this is occurring?

Mr. SMITH. Well, there are primarily three—really, four—reasons why that is happening. One is the proliferation of abusive tax shelters, and the campaign undertaken by the IRS to get on top of that problem. That, of course, overflows into our Department because a good many of them are criminal in nature. Therefore, our caseload in dealing with the tax shelters has greatly increased.

Another area I mentioned previously is the tax protester movement. This is a movement which has quadrupled in the last few years.

Senator LAXALT. What are the present numbers in the tax protester movement, roughly? Are we talking about tens of thousands or hundreds of thousands, or do you know?

Mr. SMITH. I can't give you specific numbers, but I can get them for you, obviously.

But the workload has increased tremendously in this area with people who have either flatly refused to file income returns—not just people, but organizations and movements, whose purpose is to avoid filing income tax returns—or filing returns with nothing on them or contending that they have no obligation. This kind of thing has been literally proliferating. I would say they have gone up 400 percent.

Do you know, Kevin?

Mr. ROONEY. I don't know.

Mr. SMITH. In any case, we can get that number if you want.

A third cause is the delinquencies that are growing at a tremendous rate; it is just collecting what is clearly owed in that area.

Senator LAXALT. Much of that has probably been attributable to the worsening economic conditions until the recovery, I assume.

Mr. SMITH. Well, that's part of it, but part of it is just plain failure to respond to obligations, hoping that they can get away with it; it is just a matter of odds.

And then the fourth cause is the fact that the Organized Crime Drug Enforcement Task Forces are producing cases now. Those task forces have IRS representatives and Tax Division representatives on them, and needless to say, particularly when you direct the effort, as we are against the distribution of networks and the leadership of the organized crime syndicates, a significant part of the effort has to do with income taxes that have not been paid.

All of this reflects on the workload of the criminal program, and that is why we have paid particular attention in doing something about that in the budget this year.

TAX SIMPLIFICATION PROGRAMS

Senator LAXALT. What thinking is going on by way of planning within the agency in the event that the President, this President or some future President would be able to secure through this Congress a tax simplification program? What is the relationship between the two?

Mr. SMITH. Mr. Chairman, if we were to tailor our requirements on the basis of predicting what Congress was going to do, we would be in a state of constant chaos.

Senator LAXALT. Well put.

[Laughter.]

Senator DECONCINI. It is not organized like the administration.

Senator LAXALT. That is right. That is right.

Mr. SMITH. I think what we have to do is plan on the basis of what we have to work with, and if something comes along like that, why, I'm sure it would be welcome. But also, you have to consider the fact that there isn't any hard and fast cutoff, that there are cases in the pipeline that would have to be taken care of, regardless of what new action might be taken in the future.

BUDGET CONSTRAINTS

Senator LAXALT. I will ask one more question. I will have others that we will submit to you, because I want my colleagues to have a chance. I think Senator Chiles, in particular, has a deadline.

As you know, we are operating now under the dictates of the Rose Garden package with rather severe budget constraints. Part of that package indicates, probably dictates, that this subcommittee, as is the case with all the other subcommittees, will deal with numbers that constitute basically a freeze on the 1984 levels, plus the pay increase, I think, of 3.5 percent. That is going to make it extraordinarily difficult for the members of this subcommittee, very frankly, when we get to the time of the markup. I know the House levels that came in are about a billion dollars over, so that will pose a rather interesting conference, to say the least.

What, by way of planning, is there in the agency to give us perhaps some more refined numbers by the time we hit the markup, recognizing the realities, the budgetary realities, that this markup presents?

Mr. SMITH. I think the House allowance gives us some funds that we didn't ask for. I'm sure they will receive some attention in the conference, since they are large sums. The sums that they took away from us are small sums but in areas where they are badly needed. I have mentioned one.

I think with respect to the overall question, the one thing that you do have to consider, insofar as this Department is concerned, is that very often we are money producers rather than money spenders. For example, I mentioned the debt collection. That debt collection is $400 million roughly, twice what it was in the previous year. That more than pays for the entire budget for the Civil Division, which is the one charged with collecting those debts.

The same thing is true with what we have just been talking about, the IRS. We go after money, and we collect money. We make money, so we need a certain investment in order to produce those results.

In other areas, our principal increase in terms of numbers this year deals with a major national problem; namely, immigration. I think, in my dealings with committees of the Congress, Senate and House alike, during the last 3½ years, almost uniformly, there has been support for strengthening the Border Patrol. This year, considering the numbers that we have facing us, it is critical that we do something about the Border Patrol.

SIMPSON-MAZZOLI BILL

Senator LAXALT. What effect upon all that will the passage or the nonpassage of the bill have?

Mr. SMITH. They are complementary. They are not substituted in any way. The mere fact that this is passed does not in any way indicate that the immigration problem is solved. It isn't and won't be until that immigration legislation is passed.

Senator LAXALT. Do you think there will be increased budgetary demands upon us by way of Border Patrol or otherwise in the event the House sees fit and we eventually resolve the immigration problem this session?

Mr. SMITH. I believe we estimate the cost of operation of the first year to be somewhere between $100 and $150 million.

Senator LAXALT. Yes.

Mr. SMITH. That is to initiate the program. Of course, the program itself contains costs. The Simpson-Mazzoli bill, over a 5-year period, has an estimated cost of $5 billion plus. The House bill, of course, is quite a different thing; it would cost $11 billion over 5 years.

But what is happening on the southern border now is something that requires immediate attention. Last year was a record year. We had over 1.1 million apprehensions, and it's anybody's guess how many enter who are not apprehended.

Already this year we have had a record month, higher by 10 percent than any previous month, that is 119,000 apprehensions in 1 month. By June of this year, we will have apprehended more people than we apprehended during the entire year in 1981 or 1982.

So we are running, right now, at a 10 percent rate higher than the record year we had last year. These are all illegal aliens crossing our border.

INCREASED BORDER APPREHENSIONS

Senator LAXALT. Why are we having those dramatic increases in your estimation?

Mr. SMITH. Well, all kinds of reasons. One of them is, of course, the economic situation in Mexico. Another is the turmoil in Central America, South America, so more and more people are using Mexico as a transit country.

Senator LAXALT. Are you, in your arrests, finding a different mix in, say, this year than we had previously as between Mexico and Central American countries?

Mr. SMITH. Well, the percentage of non-Mexicans has increased, I think.

Mr. NELSON. Yes, sir.

Senator LAXALT. Is that dramatic?

Mr. NELSON. We are up 10 or 12 percent, higher than 12 percent for other than Mexicans.

Senator LAXALT. Where out of Central America—El Salvador and Nicaragua?

Mr. NELSON. Large percentages from El Salvador, Guatemala, Nicaragua. But mostly El Salvador.

CENTRAL AMERICAN ILLEGAL ALIENS

Senator LAXALT. Do you share this concern expressed on our side, probably on the House side, as well, if we are not able to accomplish something and stabilize Central America, this country could be faced with a very pressing problem in terms of literally hundreds of thousands of people attempting to get into the United States from Central America?

Mr. SMITH. It is not a matter of can be, it is happening right now.

Senator LAXALT. Do you view that to be a substantial current problem?

Mr. SMITH. It is a major, major current problem. The only difference between now and later on will be in numbers, and the numbers are already overwhelming.

Mr. NELSON. I will reinforce that point, Mr. Chairman. In the projections of population growth, for example, of the Mexican population, there will be a dramatic increase in the next 20 to 30 years. This is essentially true for all of Central and Latin America. So we know we will have more coming through, and if they are able to get through, that will build. It is a very immediate problem and a very central issue.

Senator LAXALT. I think, since we are discussing Border Patrol, this would be an appropriate time for me to yield to my distinguished colleague from the State of Arizona.

Senator DECONCINI. Mr. Chairman, thank you.

The Senator from Florida has a question.

Senator LAXALT. Do you have a time press? Do you want to talk about Mariel for a second?

Do you mind if we take Mariel just a little bit out of order?

Mr. SMITH. No.

Senator LAXALT. Why don't you go ahead, Senator Chiles, and speak to the Mariel problem.

MARIEL CUBANS

Senator CHILES. Thank you very much, Mr. Chairman.

Senator DeConcini, I appreciate your indulgence in allowing me to go ahead, and I will try to be very brief.

General, as you know, Senator Laxalt and I have been working together with you and others in the Department of Justice since last year's hearings to resolve a matter that Florida and at least nine other States feel is a matter of some inequity. As you remember, many of the Mariel Cubans that flooded south Florida in 1980 were by and large Castro's undesirables. Castro just foisted them on us, and many of them were sent directly from Cuban prisons. In coping with the influx of so many people in so little time, General Civiletti paroled most of the entrants into the area in 6 months. That was followed by an additional 6 months extension, and now the President, the Reagan administration has extended these extensions for an unlimited period of time. We all agree to the Federal responsibility. Paroling the Mariel Cubans into south Florida was a Federal decision. And since these Federal decisions occurred, 366 Mariel Cubans subsequently have been convicted of felony offenses in Florida, offenders with an average sentence of 11.9 years. Florida has another 1,025 Cubans on supervised state probation.

From July 11, 1981, through April 1984, it is estimated that Florida incurred $6,296,817 in operating costs as a direct result of supervising them in the community on probation; another $14 million as a fixed capital outlay would be required to construct a sufficient number of prison beds to house the Mariel felons now in State prisons.

I have a statement, Mr. Chairman, from Governor Graham, outlining many of these points, and I would like to insert that in the record, if I may.

Senator LAXALT. It will be so ordered if there is no objection.

[The statement of Governor Graham follows:]

PREPARED STATEMENT OF HON. BOB GRAHAM

GOVERNOR OF FLORIDA

One of the serious consequences of the 1980 Mariel Cuban Boatlift was the added burden placed upon Florida's and other states' criminal justice systems. It is well known that the Mariel "invasion" included a minority of very violent, dangerous people who had been released from Cuban prisons, many of whom were subsequently convicted of felonies and incarcerated in various state prisons after their arrival in the United States.

According to the Report of the Dade County Grand Jury (filed May 11, 1982)—

- felony arrests attributable to Mariel refugees and other, probably illegal, aliens have contributed greatly to an increase in the criminal justice caseload.
- INS had no policy or procedure for either identifying or assuming responsibility for the discernable minority of dangerous Mariel entrants.
- INS had no policy or procedure for either identifying or assuming responsibility for the apparently large numbers of illegal aliens who are arrested for felonies, and they are passing through our justice system undetected.

Florida's taxpayers continue to be unfairly burned by the failure of the federal government to assume responsibility for these Mariel felons. As of April 1984, the State, which is under federal court orders to reduce prison overcrowding by 1985, has incarcerated 386 convicted Mariel felons whose average sentence is 11.9 years. The annual operating cost to the State of Florida for maintaining these prisons is $3,240,470. Additionally, there are 1,025 Mariel prisoners on supervised state probation at an annual cost of $587,376. From July 1, 1981 through April 1984 it is estimated that Florida incurred $6,356,817 in operating costs as a direct result of incarcerating Mariel felons in the state correctional system or supervising them in the community as probationers. Additionally, $14,561,850 in Fixed Capital Outlay would be required to construct a sufficient number of prison beds to house the number of Mariel felons incarcerated in state prisons during April 1984.

Equity demands that the federal government assume responsibility for these criminals who entered our criminal justice system as a direct result of the government's inability to adequately control immigration in the first case.

I am encouraged that the Senate has taken steps to assert federal responsibility in this matter through amendment to Immigration Reform legislation which is awaiting final congressional action. Prompt funding by the Appropriations Committee remains a needed additional step. I urge your support for adequate and timely appropriations to relieve affected states of these unfair burdens.

MARIEL CUBANS IN FLORIDA

Senator CHILES. General, Florida prisons are overcrowded, and the State is also under a Federal order to reduce those prison overcrowdings by 1985. The State sort of feels like they are getting it from both sides. We have put people into the prisons as a result of a Federal decision or absence of a Federal decision, I guess, in the initial instance of the Mariel Cubans coming here. Now, the Federal courts say, "Your prisons are overcrowded and you have got to reduce them or you have got to construct additional prison facilities."

So the State of Florida—and there are some other States that now hold the Mariel Cubans in their prisons—would like the Federal Government to revoke the paroles of those convicted felons and take them back into Federal custody. I would point out to you that, normally, for anybody seeking immigration status, if they commit a felony, we revoke that status and we ship them home. We can't seem to do that with the Cubans, so again, we have a situation that is totally different from what you normally would find. We won't revoke the parole, so even when we have convicted them of a felony, the State is having to incarcerate those people. We feel either the Federal Government should revoke those paroles and take them back into Federal custody or help to compensate the States for their expense. Last year, Senator Laxalt asked Senators D'Amato, Heinz, Bentsen, Lautenberg, Bradley, Cranston, and me not to offer our amendment which was to provide $5 million, a one-shot $5 million to compensate the several States performing what they believe clearly is a Federal responsibility.

I think he made that request because he wanted, as I understand it, the Department to have more time to consider the proposal. But I think we would like to know, what is the Department's reaction to assuming Federal responsibility for the Mariel Cubans in this status by compensating the States and buying them out, not to exceed $5 million. The State of Florida is facing operating costs of at least $40 million now for the Mariel Cubans now in custody in parole status.

That is excluding the $15 million that we said would be construction costs to build these additional beds.

We just feel that is an unfair burden to place on the state, not to even recognize that this is a Federal responsibility for this burden. We can't understand why the State of Florida and the other States should bear the cost for a Federal problem and a Federal responsibility.

Mr. SMITH. We certainly sympathize with that situation, and not only do we sympathize with it, we are inflicted with it ourselves, because we have a significant number of Mariel Cubans who are in the prison in Atlanta that we have no way to send back to Cuba.

PAROLE OF MARIEL CUBANS

Senator CHILES. We worry every day they are going to be turned loose, because we know they will be in south Florida the day they are turned loose.

Mr. SMITH. So do we. So do we. That is a continuing problem. As far as the Mariel group is concerned, most of those presumably would be affected if this new immigration program is passed, and even if that is not the case, they may be subject to readjustment anyway under the law as it specifically applies to Cubans.

What we are talking about, really, is sharing the costs of those Mariel Cubans who commit crimes which are normally the responsibility of the State and local governments. If if we were to assume those costs, which we never have done, it is a little hard to see how you could limit it to just Florida, because we have a host of illegal immigrants in this country. Some of them would become legalized if this program goes through.

We have large numbers of refugees in this country under our refugee program. If the Federal Government were to start to pick up the tab for either the trial or the prosecution, investigation or the incarceration of those people who would normally be and are now the responsibility of the States and localities, the Federal Government would be taking on a burden that it just could not afford to assume.

DEPORTATION OF ALIENS

Senator CHILES. Any of those people are subject to deportation, because we can send them back to the country from which they come. We can't do that with the Cubans, so you have got a very unique situation here. I don't think there is any similar situation; that there has ever been any similar situation.

Mr. SMITH. You had the same situation with the Haitians.

Senator CHILES. They can be sent back to Haiti if they are illegal.

Mr. SMITH. Yes. Theoretically, that is so, but in the meantime, some of them are committing crimes, and you have these other groups. You can't deport an illegal immigrant who is legalized under our new program, and the refugee situation, in a sense, blankets the country. If the Federal Government starts picking up the tab for what is essentially a local responsibility——

Senator CHILES. Don't you have a little bit of a concern with what is fair here, General? The State of Florida didn't say, "We welcome these refugees." It was not State policy that allowed them to come, it was not State policy that continues parole for those people. So it just seems like to me there is a basic question of fairness here, and we are talking about a one-shot, $5 million, with a limit on it, in that amount, and it just seems like to me that it is just a very, very basic question of fairness.

Mr. SMITH. I can certainly understand that, and I certainly agree that there is a problem, but we certainly have to look at it from the standpoint of the overall problem. What would face us if we were to start to pay for the law enforcement treatment involving crimes that are the responsibility of the State and local governments? If we were to once start to do that, it would be almost impossible to draw the line, as I see it. And I might say, you mentioned some figures there.

We are talking in big dollars. The amount that the Federal Government is having to pay out because of the people in Atlanta is staggering.

ATLANTA DETENTIONS

Senator LAXALT. How many do we have in Atlanta at the present time?

Mr. SMITH. There are about, what would you estimate, in the thousands, 1,300?

Senator LAXALT. 1,300.

Mr. SMITH. That is normal.

UNIQUE PROBLEM OF MARIEL CUBANS

Senator LAXALT. Let me ask you, if the Senator will yield for a moment. Just as the Senator has indicated, don't you think the Mariel situation is very unique and can be distinguished from the normal situation? I mean, we really dumped this problem on these people down there through what I consider, and I don't think the Senator would disagree, a rather misguided policy.

Mr. SMITH. Every situation is unique.

Senator CHILES. That misguided policy helped elect this administration, I would say.

[Laughter.]

Senator LAXALT. That is true.

Mr. SMITH. I understand what Senator Chiles is saying. From his standpoint, I can certainly appreciate his view, but that is a circumstance that happened. Trying to point the finger as to who did it and who is responsible, who is to blame, that's a very difficult thing to do. Who is to blame for the fact that we have *x* million illegal aliens in the country? They are here. It is a fact, and we have to deal with the problem as it exists. We can fully sympathize with your entire viewpoint and position on this, but when you look at it from the standpoint of——

Senator CHILES. Do you know of any other situation in which the Federal Government gives a parole to a convicted felon? Can you tell me? We have continued the parole of people that have been convicted since they came here. Now, you tell me another situation in which the Federal Government gives a parole to a convicted felon. We send the rest of them back. We send them somewhere. We don't continue the parole.

Senator RUDMAN. Will the Senator from Florida yield for a moment?

Senator CHILES. Sure.

Senator RUDMAN. With the chairman's permission?

Senator LAXALT. Surely.

FEDERAL RESPONSIBILITIES FOR REFUGEES

Senator RUDMAN. Many of us who luckily don't have the problem nevertheless have great concern for the problem Senator Chiles and his colleagues have expressed. I do think it is a very distinctive problem. There is no precedent for it. Right or wrong, the Federal Government made this happen by, I think, following some very ill-advised policies. But be that as it may, it has been done. You can't deport these people.

What the Congress could do, General, is to take the problem off the Senator's hands in another way. We could require by law that any of these people who have been paroled, this class of people—and they are a special class—if they violate that parole, will immediately have it revoked and go back into the Federal system.

Then it will be Mr. Carlson's problem. We will have to build more prisons. Why should the people of Florida or, not so luckily people in New Hampshire, have to cover it? Let the Federal Government take care of it. Let it be spread across all the taxpayers. That may be a solution for the people down in the State of Florida. I certainly think if we can't get some appropriation and money, we ought to do it that way.

Senator CHILES. We would accede to that solution very, very quickly, as you might know.

Mr. SMITH. When you are talking about parole, if these people have committed crimes, the Federal Government is not taking any parole action with respect to that group.

Senator DECONCINI. He is not talking about that; he is talking about the parole.

Senator CHILES. The parole that allows them to stay in this country.

Mr. SMITH. That is a fact of life. There is nothing we can do other than uproot 6 million illegal aliens and send them out.

DEPORTATION

Senator DECONCINI. Send them home.

Mr. SMITH. You can extend this argument into other situations. I mentioned refugees. We have taken thousands of refugees into this country. To a certain extent that puts a burden on State and local governments—there is no question about that—in various areas. Are you saying that the Federal Government should make up these higher costs?

Senator CHILES. No, sir. I am saying if one of those refugees commits a crime and is convicted, we revoke his status, and we return him, because he loses his status.

Mr. SMITH. You can't do that. That is not an option.

Senator RUDMAN. We will have to send them to a Federal prison. That is my solution.

Mr. SMITH. You are basically saying it is unfair because this is a federally instituted problem, and it is costing us money. That is what you are saying.

Senator CHILES. No. The Federal Government continues the problem, because we have now extended the parole indefinitely, because we did give 6-month extensions of the parole situation. That is a blanket.

Mr. SMITH. We don't have any choice. We don't have any choice.

Senator CHILES. That is Federal action every time is what I am saying, and the State government is having to pay the consequence of that Federal action. Now, that is what is not fair.

Mr. SMITH. But what I am saying is that there are a host of situations where the Federal Government does something or doesn't do something which imposes certain costs on the States that the States can say it is unfair, "But we didn't take the action; why should we pay that cost?" The refugees situation is one that comes to mind. There are a lot of others.

Certainly, that doesn't involve the commitment of a crime and jail, but it does involve additional costs to States and localities. If we were to adopt this position, we would be hard put to say that on the basis for the same reason, we shouldn't pick up all these other costs.

COST TO STATES

Senator CHILES. The Federal Government has picked up some of the costs. Florida, as a result of education, as a result of job training, as a result of health costs, you know, we have had a refugee problem. We never thought we were getting our fair share, but that fight has been going on all the time, as far as I know. There has been a recognition that there were costs involved. It is just that.

Mr. Chairman, I am taking a long time.

Mr. SMITH. You talk about $5 million, and that is not a large sum, but the principle you are establishing involves huge sums, not just $5 million. We fully sympathize with your position; there is no question about that. But when we look at it and its possible consequences, we are talking in large, large numbers, once we were to establish that as the principle.

Mr. NELSON. Senator, I wonder if I might supplement a couple of things in your question that I think might be worthy of comment. One related to your concern, which was ours also, that some of those in Atlanta might be released. We feel that with our strong litigative efforts in fighting a Federal district judge's opinion, and with the precedent of the 11th Circuit decision relating to the Haitian litigation, it is very unlikely now that those people will be released. We feel very good about that.

The second point, of course, is a difficult one in the foreign policy area of whether there is any chance to return these people. Certainly, the Attorney General's leadership and the Justice Department's efforts in working with the State Department are ongoing. I don't think any of us have any false hopes, but those efforts are going to continue, and we hope some day we will succeed.

The third and final point is that, as you know, Senator Chiles, we briefed you and members of the Florida delegation. There has been extensive work going on in planning to be sure there is no new Mariel. I think we can be very pleased with a lot of efforts in that area.

Senator LAXALT. Thank you. I think the positions of both sides have been well stated, and we have an adequate record for consideration by the subcommittee. I might say to the General, despite, we understand what the present situation is and what the future impact there might be in funding this, I think I speak for most of the members of the subcommittee, and I hope I do, in stating they are sympathetic to this problem, and sympathetic to the point that they may do something. It is going to be an interesting conference.

Mr. SMITH. That is the judgment of the subcommittee.

Senator LAXALT. I just wanted you to know that we haven't marked it up, and I think it is the sense of the subcommittee that we have waited a year for it to ameliorate. We are afraid it is going the other way.

Mr. SMITH. I think if anything, that kind of problem is going to grow, not just in Florida, but in a variety of other respects, so we have the fullest sympathy for the position of Florida in this situation. I say we are part of it.

Senator LAXALT. We understand.

Senator CHILES. Mr. Chairman, I have some other questions. I will just submit them for the record.

Senator LAXALT. I thank the Senator.

DISTINCTIVE NATURE OF MARIEL CUBAN PROBLEM

Senator RUDMAN. Let me just make one comment before Senator Chiles leaves and then I will yield back to you, because my plane is somewhat later.

I would only say, just to wind up this discussion, Mr. Chairman, that I believe that the Attorney General makes a very good point about establishing broad principles that could be enormously expensive. But, it seems to me that there can be a very tightly drawn distinction between most of the cases the Attorney General speaks of and that of the Mariel boat people which the Senator from Florida is dealing with.

The Statue of Liberty did say, "Send us your poor and your tired and your wretched." It doesn't say your murderers and your rapists.

[Laughter.]

Senator RUDMAN. The fact of the matter——

Mr. SMITH. It didn't exclude them, either.

[Laughter.]

Senator RUDMAN. The Senator from Florida's point is that the presence in this country of that group of people was, right or wrong, by a deliberate, knowing policy of the highest executive in this country, the President of the United States. That is unlike anything that has ever happened before.

The motivation was fine. The logic was terrible. What the Senator from Florida is saying is that we ought to carve out an exception for this very special group of people and ensure what you are concerned about, opening the flood gates, doesn't happen. I think he is going to get a lot of support for that. By the grace of God for most of us, I mean, I would hate to go back to New Hampshire and face my constituents with even 10,000 people in my State under those circumstances. They would run me out of town on a rail for not trying to solve that problem. I just think that we really ought to look at it and work with the Attorney General. There ought to be a way to deal with that problem, because I think it is atrocious.

Senator CHILES. Thank you. Thank you, Mr. Chairman.

Senator LAXALT. Good luck, Lawton.

All right, Senator DeConcini.

NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM CONCERNS

Senator DeConcini. Mr. Chairman, thank you.

The Senator from New Hampshire, thank you.

Mr. Attorney General, I am very concerned about the President's national narcotics border interdiction system known as NNBIS. I am informed that the DEA Administrator has been quoted in the press recently as being very critical of NNBIS. Mr. Mullen was even quoted as saying that NNBIS is getting in the way of our drug enforcement program. A memo from Mr. Mullen to you in January contains some of the harshest criticism I have heard of the Vice President's drug interdiction program. I happen to be one of the strong supporters of those programs, and have encouraged the Vice President.

Among other things, Mr. Mullen said in the memorandum, "The location of NNBIS, in the Office of the Vice President, fragments the coordination of drug law enforcement presumed to belong to the Attorney General, and that this will spark further congressional demand for a drug czar."

He goes on to say that NNBIS duplicated DEA's overseas mission, causing great confusion among foreign law enforcement officials and that contact with foreign, State and local enforcement officials under NNBIS has confused established reporting relationships with DEA and Customs. He says that one Coast Guard lieutenant commander called NNBIS "an intellectual fraud." Mr. Mullen concludes by recommending that the Vice President's program be phased down.

Mr. Mullen's reputation speaks for itself, as does yours, in wanting to do something about drugs and also regarding opposition to a drug czar.

What is your reaction to your DEA Administrator's rather strident rebuke of Vice President Bush's drug interdiction effort?

Mr. Smith. Of course, that memo came out in January, several months ago, and was designed as an internal document.

Since that time, there have been numerous meetings between Bud Mullen and others and representatives of NNBIS, and those discussions are continuing, as a matter of fact.

As of right now, they have been quite productive. I think that by and large most of the differences that may have surfaced there and which were referred to in that memorandum have been resolved, although it is too early for me to really come to a specific conclusion on that. It is in the process, and it is continuing.

I might say in that respect that whenever you develop an organization of changes or institute new and different ways of doing things, you always are going to have a certain shakedown period. We have done a great deal that is quite dramatic in this area. The organized crime drug enforcement task forces are elite, and I will have to say that we have been very pleased because their shakedown has created a minimum of problems.

In terms of NNBIS, which has a different focus and is brand new, there are bound to be growing pains. I think that is really part of the process that we are going through right now.

QUESTION OF A DRUG CZAR

Senator DECONCINI. Mr. Attorney General, I appreciate your optimism that this is turning around and being corrected. In that same memo, Mr. Mullen goes on to criticize NNBIS as "a major obstacle to the one-agency concept of drug enforcement." He goes on to say that, "The accomplishments of our interdiction programs are overemphasized, building unrealistic expectations among the American people that this strategy is the primary means of reducing the availability of illegal drugs."

The reason I am bringing this to your attention, Mr. Attorney General, is I thought NNBIS was a good idea, especially when we couldn't get the national drug coordinator legislation signed by the President. I know that you objected to it, and we talked about that for months here. And some day it will probably happen. But in any event, NNBIS seemed to be an answer, that we were going to put drug interdiction under one control.

But I am very concerned that either you are not enough of a team player in this effort, or the Vice President and Admiral Murphy aren't exerting themselves enough to see that this comes about.

When you see the head of the DEA state it so clearly that we are raising the expectations of the American public, it seems like we are once again going through the same thing that Democrat and Republican administrations have talked about and talked about: We are going to have a war on drugs, but there is no shooting.

Mr. SMITH. I have to disagree with that latter statement. There is a lot of shooting, and not only is there a lot of shooting, but it is most effective shooting.

Senator DECONCINI. Mr. Mullen says that those statistics that you quote——

Mr. SMITH. I am talking about the overall effort. In terms of NNBIS, NNBIS was never intended to be an operating agency. It is really a coordinating effort, and not being operational, it takes a while for a group with that kind of a mission to settle down, organize and become effective and efficient. That is the process that is now going on.

Senator DECONCINI. You know, NNBIS is——

Mr. SMITH. In terms of a drug czar, I would like to make two points on that one. The first is, we have a drug czar, right now. The drug czar is the President of the United States. If there is any problem with coordination, he is the one who can take care of that. But we don't have any problem with coordination.

COORDINATION OF DRUG ISSUES

Senator DECONCINI. Oh, Mr. Attorney General, you are not in touch with what is going on. If you have not listened to the testimony at the English hearings and the hearings that we have had on lack of drug coordination and the problems with the Defense Department and the Treasury Department, and now your own DEA Director, you should. If you think you have no problems with coordination, I urge you very respectfully to look at that yourself, not from just what you want to hear, but from the people who know.

Mr. SMITH. Senator, I have listened, and I have been intimately connected with it. In terms of what we are doing and what we have already produced, the coordination and cooperation is outstanding. I have, myself, personally announced the largest heroin drug bust ever in New York, which arrested the top members of one of the principal organized crime drug trafficking organizations. I have done the same thing with Boston, the same thing was done in Atlanta, the largest cocaine bust ever. I can tell you first-hand that the cooperation that has existed between the agencies of the Federal Government to deal with this problem produced these results, I think, without precedent. I will go beyond that; not only among the Federal law enforcement agencies, but among the Federal and State and local agencies.

These occurrences could not have taken place had that cooperation not existed. It is exemplified in these task forces. Unfortunately, there are superficial occurences that take place which tend to create the impression that this is not the case and things are not going well. That is just not so.

Senator DECONCINI. Mr. Mullen says it is not so. He says the statistics are overestimated.

Mr. SMITH. Sure, that is part——

Senator DECONCINI. Coordination is not there.

Mr. SMITH [continuing]. That is part of putting an organization together. It is part of what I call growing pains. You are not going to start out, when you consider the dramatic changes we have made, bringing the FBI into this, consolidating with the DEA, trying to bring the Armed Forces for the first time into this effort, trying to centralize our intelligence gathering facilities, this is all being done. The task forces have been operational only since last summer, yet they have produced remarkable results.

Now, sure, there are going to be instances where there hasn't been cooperation or instances where there are growing pains or instances such as this, where DEA doesn't think that NNBIS should be doing things the way they are doing it; they think they ought to do it some other way. Well, NNBIS may have some other ideas on that in certain areas, but these are things that can be worked out. Instead of concentrating on what I call these superficial problems, the shakedown problems, we ought to really be looking at what's going on out there. Look at what's going on out there, we have a drug enforcement effort in place now that has never existed before, and that is true by any measure.

Senator DECONCINI. Mr. Attorney General, wouldn't you concede that as long as the head of the DEA says that NNBIS or our national drug interdiction enforcement effort should not be of primary importance or due the great emphasis that is now on it, that we have a coordination problem? How are you going to have the DEA coordinate when they say that that interdiction isn't where it is going to be? It is going to take you to tell Mr. Mullen. It is going to take that drug czar, the President, to tell Mr. Mullen, to tell Secretary Weinberger, we want those helicopters transferred. If we have a drug czar, it ought to be used, and Vice President Bush has used it very effectively, but on a number of occasions, he hasn't.

My plea to you is to get in there and be just as tough defending to me how great things are to see that NNBIS really does do it and that your Department helps.

Mr. SMITH. I'm not talking about how great things are, although they are very, very effective right now. That, in no sense, means that we can't improve in a host of different areas.

Senator DECONCINI. I am glad to hear that.

Mr. SMITH. You, as I understand it, concede that the concept of NNBIS is an excellent concept.

Senator DECONCINI. Yes, sir.

Mr. SMITH. And the utilization, the change in posse comitatus and the use of these facilities is an excellent idea. The problem now is making it work, and I would say this: That you would have more to worry about if you didn't have a Bud Mullen memo of this kind than you do in having one, because it shows that the system is working in the sense that if there are problems, they are pointed out, and they are pointed out in no uncertain terms. People then know what to do about it.

I think that memo indicates that the system that is putting this whole organization into place and making it work is working, not that it is not working.

FUNCTIONING OF NNBIS

Senator LAXALT. May I ask a threshold question? If you have a policy difference, as apparently the case was when Bud wrote his memo, when was that, in January?

Senator DECONCINI. Yes, sir.

Senator LAXALT. And he indicated that interdiction isn't the way to go, who in the present framework calls that shot, is it this Attorney General or the Vice President?

Mr. SMITH. We have regular meetings of the NNBIS group, which is made up of—I attend those meetings, so does Bud Mullen and the representatives of Director Webster, and so do the representatives of the Department of Defense, Cap Weinberger. Whoever is necessary, attends those meetings.

Senator LAXALT. Do you develop a consensus, always?

Mr. SMITH. Well, we ultimately reach conclusions and decisions are made. That doesn't mean that there aren't differences of opinions.

Senator LAXALT. I am just trying to get at the management philosophy here. If there is a conflict in prioritization and you sit down as a group and there still continues to be a division and you fail to achieve a consensus, who at that point calls it? Does it go to the Oval Office for that kind of determination?

Mr. SMITH. It would be very rare if it would go to the Oval Office, but it would go to the Oval Office if there was not a decision.

Senator LAXALT. But failing that?

Mr. SMITH. In other words, if I had a position with respect to how things ought to be done, and let's say NNBIS, the Vice President, or so on had a different viewpoint on that and we could not agree, why, we would resolve that the way we resolve every other issue. That is just part of the process.

Senator LAXALT. Yes, but the point I am trying to make is, and I suppose this is of importance obviously internally in how your shop works, that you and the Vice President under the present working relationship, I gather, develop consensus most of the time. If you don't, you simply buck it to the President as you would in normal matters?

Mr. SMITH. As in any other case. As I say, the President is the drug czar. That's the way it has to be. We all know that a result that can be achieved by substantial consensus, is vastly better than the result that is ordered and imposed.

Senator LAXALT. Particularly when you have professionals like Mullen speaking. I mean, he knows what he is doing.

Mr. SMITH. This is what I say. I think that the Mullen memo indicates that the system is working, not that it is not working. We have been cooperating, and I think I reflect the viewpoint across the law enforcement spectrum with respect to the drug enforcement effort. The cooperation there has been without precedent, and not just among Federal agencies, but between Federal and State and local agencies.

BORDER CONSOLIDATION PLAN

Senator LAXALT. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, I will take just one more question due to time and let the Senator from New Hampshire go on. He certainly has been kind, and so has the chairman. I have a number of questions, Mr. Attorney General, that I will submit for the record.

First, the border consolidation plan that has been proposed by the administration, as you know, has run into some problems here on both sides of the Hill regarding a concern over a reduction in the narcotic enforcement that would come out through Customs. I realize that is not your agency, and I realize that the reductions over there are not your responsibility, but this is something I hate to see you give up on, quite frankly. I would only urge you, if you haven't, to consider the compromises being floated around here on the Hill.

OMB has not signed off on it, but they are interested in moving in the direction of some consolidation, and if you haven't seen it, Senator Abdnor and I would be glad to submit it to you for your comments. Perhaps we can still, in time, have something left to put together.

I do have one question I would like to ask Mr. Nelson.

Mr. SMITH. Could I comment on that, Senator?

Senator DECONCINI. Yes, sir, excuse me.

Mr. SMITH. That consolidation plan, as you know, was the result of intense and in-depth study and effort, indeed, on the executive side. The result that came out of that has the support of both Customs and INS, and it has the blessing of OMB. As you know, it has been passed by the House. It is on the floor of the Senate. Its primary purpose is to create a single agency with primary inspection functions.

It involves a net change in personnel of only 200. In other words, about 700 go from Customs to INS and about 500 go from INS to Customs. In my opinion, if that program, which has gone through all of that, is not enacted in this Congress, I think that you can just forget a single agency primary inspection system for the foreseeable future. I know there are other possible compromises but I think that this is the reasonable one that stands a significant chance of surviving that process, and it has gone this far. I think it would be a tragedy to not have it succeed.

MODIFICATIONS TO CONSOLIDATION PLAN

Senator DECONCINI. Mr. Attorney General, I'm not saying that I could keep it from succeeding, but without some modification, I find it very difficult to support. I can give you information regarding administration officials' memorandums opposing it and cost savings that could be made if it were put into Customs. It would save $27 million over putting all primary inspection into INS. So, there are a lot of different variables when you look at this thing.

My only statement is that if we count the whole piece of pie that you want, I think there are some good parts and some good berries in that pie. I would sure like to try a consolidation. I don't mean to be argumentative. I know you would like to pass the whole thing, but I see some problems with it, and maybe we still have time to put something together.

Mr. SMITH. I just want to say I would be somewhat suspicious of those figures, because we went around and around on what would be saved here and what would be saved there, and it always depends on how you compute it.

Senator DECONCINI. Our information came from the Deputy Secretary of the Treasury's memorandums during that process. Maybe they're wrong, but they do raise serious questions regarding cost savings.

Mr. SMITH. No. It was what we finally had to do when we were wrestling with putting that together was to make sure that everybody calculated their figures on the same basis, because they, in fact, were not doing so, and their comparisons were not apt.

Mr. NELSON. Senator, may I just supplement that? And it won't take long. There is an inference that I think should be corrected on the Immigration Service's role, current and future, in the growth area. There is an idea that if we go forward with the plan, which as the

Attorney General indicated, not only went through the highest level of OMB, but was signed off by the Secretary of Treasury and by the Attorney General and by the Cabinet Council and by the President and went through the administration's collective wisdom on the only feasible way to go, and we would be happy to go through figures of any other plan, but we think this makes sense. For something that started before any of us were here, 40 or 50 years ago this really represents an honest way of dealing with the situation. We hope that the Senate will allow the reorganization bill to go through the Senate and be passed and allow a hearing on this. It can be rejected if the Senate or the House does not like it; if they feel it is meritorious, it can be approved. We feel that process needs your support so it can be heard fairly.

In the narcotics area, we do an awful lot in the narcotics area, although that has not been our prime function. In the last year, there was over $57 million worth of narcotics that Immigration Service was involved in seizing, half of that in concert with other agencies, and half of that on our own. There has been a very dramatic increase over the past few years. We are the largest agency right now, and certainly, their efforts there are significant.

All our border agents are fluent in Spanish. That is unique. Let's face it, most of the smuggling across the border involves people, mostly those who speak Spanish, so just the ability to speak Spanish is a significant thing. I think the border patrol training is significant to a lot of others out there. I think in the narcotics area, we would be, in fact, more effective on the land borders, and of course that was part of the understanding. Let the Customs focus on the airports and seaports. On the land borders, we have more credentials.

Senator, you would find the narcotics border improvement would be more improved.

INS STAFFING LEVELS

Senator DECONCINI. I found just the opposite. That is why Mr. English and myself and Mr. Abdnor have opposed this, because we find absolutely just the opposite of what you say. Let me address a problem. Your border patrol and your budget area come out winners in fiscal year 1985. I am glad to see that. Mr. Attorney General, I want to compliment you, because this administration has finally given INS the attention it deserves. The last one was four times worse, in not filling border patrol positions. Some of us on this committee have constantly added them, and they have not been filled, so I compliment you for that. No one can be more pleased of the major infusion of positions than I am, but Mr. Nelson, the shortfall in actual hires up to your authorized ceiling, in my judgment, needs an explanation. We talked about this once before, and I don't recall getting the information from you.

In 1982, you were nearly 340 positions short of your authorized ceiling. In 1983, you were 166 short. So far in April 1984, you were 240 positions short of your funding ceiling. The question is simply, what assurance can you give the committee that if we approve the 1,000 new slots for the border patrol and INS that you will actually fill them in 1985? What plans, if any do you have to ask for similar staffing boosts in the ports of entry for next year, or is this a one-shot thing?

Mr. NELSON. First of all, I want to thank you, on behalf of the Attorney General and the Department of Justice for your support for the thousand positions increase. As you indicated, we think this is not only necessary, but absolutely critical for the future. Currently, and I will respond to your other question in a moment, the border patrol is, per agent, apprehending over 400 illegal aliens a year. That is up from 260 illegal aliens in 1980. I think you can see the dramatic improvement in the border patrol.

It also points out the need for additional resources, and I think we have addressed that. Also, on the border you need a combination of manpower and morale, and we are at an all-time high. I would like to verify that by your view of it. For instance, we have had a tremendous increase in equipment. We have more helicopters on line, many more than before. The infrared screens have been expanded in quality and number. A number of sensors have been installed in El Paso. We installed low-level television that gives us a capability there. There are many more technological improvements. That, together with the existing manpower, we think has given us a vast improvement. The need is there, as we say, for the increase to tie into the overall immigration effort.

As to the staffing, Senator DeConcini, I think we can be very proud of our record. In this year, we are at a 95 percent filled rate in authorized positions. We will match that with any organization, because you obviously have attrition and other different factors in there. That is a 95-percent fill rate, currently, compared with an 83-percent rate in 1980. We would accept your comments that it has been a vast improvement.

INS VACANCIES

Senator DECONCINI. You have 240 vacancies right now?

Mr. NELSON. I'm not sure of the number. We have 2,700 on duty, which is 124 more than in 1981. We, in 1983, utilized 2,700 work-years, which was more than ever before, 6 percent over our previous high. I'm not sure of the exact number of current vacancies.

Senator DECONCINI. Would you verify that as of April 1984 you were 240 below your ceiling?

Mr. NELSON. I will have to give you the exact figure. I may be working at it from the other end. As I say, we are 95-percent filled, so that figure does not sound accurate to me.

We have, as I say, we have a high fill rate and a high hiring rate. We also have several training classes going on currently. Part of your other question, Senator, was how would we utilize the thousand additional positions. We are ready, willing and able to add those, and are certainly capable of doing it. We have classes in Georgia at the Law Enforcement Training Center that will cover all 1,000 of those positions should the Congress grant them, which we hope they will.

We currently have over 1,000 that have been tested and interviewed and are ready to come in through our normal process.

VERIFICATION OF STAFFING LEVELS

Senator DeConcini. Mr. Chairman, thank you. I am running out of time. I would like verification as to what you were as of April 1, 1984, and verify what your authorized ceiling shortfall was for 1981, 1982, and 1983. That is all I have, Mr. Chairman. I will submit the balance of my questions for the record. I apologize to the Senator from New Hampshire for taking time.

[The information follows:]

Report on Border Patrol Staffing and Accomplishments

The following table presents Border Patrol employment statistics from 1980 forward. The column labeled "actual workyear" is derived from payroll data on hours paid during the year, and is the single most reliable indicator of the size of the Border Patrol workforce over the course of the year. The workyear ceiling represents the OMB imposed limit on workyears devoted to a particular program. Unlike the actual workyears, the on duty force presents only a snapshot of actual staffing.

Fiscal Year	Authorized Positions	Workyear Ceiling	Actual Workyears	April 1 On Duty Force (Full Time Position)
1980	2915	2640	2418	2389
1981	2872	2686	2562	2540
1982	2890	2724	2546	2557
1983	2865	2735	2713	2664
1984	2865	2810		2619

Since it is considered unwise to put agents in the field before they have completed basic training, new agents are brought on duty according to class schedules set months in advance at the Federal Law Enforcement Training Center (FLETC). The on duty force rises and falls rather dramatically according to the distribution of classes during the year.

It is clear from the chart that both the workyears and the on duty figures have risen over the past few years, and that 1983 saw the Border Patrol's closest approach ever to the workyear ceiling. The Border Patrol has attempted to maintain the staffing levels in 1984. Three new classes including a total of 146 new agents have began since the April figures reflected in the chart, and two more, totaling 96 agents, are scheduled to report before the end of the year.

Steps have been to expand the capacity of the Federal Law Enforcement Training Center at Glynco, Georgia to handle additional Border Patrol trainees. This expanded capacity will allow for accelerated recruiting and training schedules for new positions in 1985, and will also allow for more flexibility in adjusting class schedules in later years. Beginning in October, we have plans for a new class of 48 trainees every two weeks. There should be little difficulty in maintaining Border Patrol staffing with this expanded capacity.

It should be pointed out that maintenance of staffing levels is not the only measure of Border Patrol effectiveness. In 1983 the Border Patrol apprehended a record 1,105,670 deportable aliens, 35% over the previous year. Apprehensions of smugglers were up 11%, to 14,127, and felony convictions are up 114%.

Nearly 7,000 smuggling vehicles worth $19 million were seized, an increase of 34% in the number, and 53% in the value. The value of narcotics seizures were up 460%, to 29 million.

Several improvements were instituted to make this effectiveness possible:

- During the last two years the intelligence system has been expanded to include a monthly assessment of Mexico, a monitoring system on activity on our Southern Border, a computerized intelligence data base, and a survey of apprehended aliens to establish motivations for entering U.S. and conditions in home areas.
- Five taskforce operations in the last two years have proven that we can shift entry patterns away from areas such as Chula Vista into areas where we are better able to deal with them by using terrain and technology. Two of these were conducted at Chula Vista.
- Carefully selected Border Patrol agents have been given special training to address unique situations such as Border violence or terrorist penetration.
- Management of the air program has been centralized and aircraft flying hours have been increased from 4,487 hours in 1982 to 6,757 hours in 1983, a 51% jump, and an all time high.

Technological improvements include the installation of two remote image low light level television systems linking a base station with up to eleven cameras. Two additional camera systems are now being developed. Six state of the art infrared scopes have been acquired and tested and six more have been ordered. Two Airborne Forward Looking Infrared (FLIR) systems have been ordered for installation on INS operated helicopters. Systems such as these aid surveillance efforts, speed response time, and significantly reduce the amount of manpower required to make an apprehension.

These increases in management effectiveness and technology, as well as the resource increases sought in the 1985 budget, will be needed in the coming months, as illegal entry continues at extremely high levels. Apprehensions are up approximately 9% in 1984, and indications are that the situation in Mexico and other sending countries continues to worsen. The value of the Peso has slipped from 165 to 209 to the dollar since January, placing further strains on the economy, and causing still higher levels of attempted entry.

ANTITRUST ENFORCEMENT

Senator LAXALT. I thank the Senator. The Attorney General will have to leave in the next few minutes.

Senator Rudman?

Senator RUDMAN. I have a lot of very difficult questions.

[Laughter.]

Mr. SMITH. I'm glad you saved them.

[Laughter.]

Senator RUDMAN. I would say as far as the Bud Mullen memorandum is concerned, when you write your memoirs, it probably should be the quintessential best evidence in the chapter entitled, "There is no such thing as an internal memorandum in the District of Columbia."

[Laughter.]

Senator RUDMAN. Let me turn to a thoroughly noncontroversial subject, Mr. Attorney General, the antitrust enforcement philosophy of the Department of Justice.

[Laughter.]

BOULDER RIDER

Senator RUDMAN. I really had a number of questions which I do not even think I will submit for the record, but instead will discuss with your very excellent Assistant Attorney General, Mr. McGrath. I will discuss those with him personally in the next several weeks. I am very concerned about something that is in the 1985 House Appropriations bill: a section called the Boulder Rider. Let me read it to you. It says, and of course it refers to that famous Boulder case on municipalities: "None of the funds appropriated or otherwise made available by this act may be obligated or expended to issue, implement, administer, conduct, or enforce any antitrust action against a municipality or other unit of local government, except that this limitation shall not apply to private trust actions."

I think that raises some very serious Constitutional questions and very serious policy questions. I am prepared to fight very vigorously to have that removed from a bill that finally passes.

Will I have the support of the Department of Justice in that effort?

Mr. SMITH. We think that that kind of a rider in an appropriation bill is a very poor way to make law, and it does, in our opinion, raise Constitutional questions. So we would oppose that kind of an approach in any case. I think we would oppose it even if we liked it. I think it is a bad way of making law.

Senator RUDMAN. I don't disagree, even having authored something similar a year ago.

[Laughter.]

Senator RUDMAN. But that was a totally different matter, and I would say that I thought I would offer it before you did.

[Laughter.]

Senator RUDMAN. That was much more tightly drawn than this is. This attempts to essentially overturn existing law as opposed to what we did last year, which simply said you ought to enforce the law. We could argue about that, but this is essentially court stripping and Department of Justice stripping language. I am going to work very hard to get rid of it and I would hope to have your cooperation on that.

The only other question I have, and I want to keep you on your timetable, I will ask Mr. Carlson.

CONSTRUCTION OF NORTHEAST PRISON FACILITY

Your Northeast prison—or maybe the Attorney General would like to answer himself, but I will give him that option. The money for the Northeast prison is in the 1985 budget request. Yet I understand from information I have, the timetable for construction of that institution has been rolled back yet another year. Can you tell me if that is so, and why?

Mr. CARLSON. Senator Rudman, we used the money that had been appropriated in 1984 to purchase two institutions, one, the State mental hospital in Rochester, Minn., which we acquired 2 weeks ago; the next one was a former seminary in Loretto, Pa. These facilities will give us a thousand beds for less money 3 years earlier than if we had to build that Northeast institution. Because of the expanding population pressure, we found it far more feasible to approach it from that standpoint than to try to wait and build an institution that will take 3 to 4 years. We are requesting funds in this budget that will be used to begin construction of a Northeast prison.

Senator RUDMAN. Has the location of that been decided?

Mr. CARLSON. No, the Corps of Engineers has a list of 40 potential sites we are looking at. We are hoping to make a decision in the very near future.

Senator RUDMAN. That is a very important initiative, because as you know, many of our prisons in the Northern States are small due to the population and particularly because of the lower crime rates in New England. It is a problem. We would like to see you get cracking on that Northeastern institution.

Mr. CARLSON. I assure you we will.

Senator RUDMAN. Mr. Chairman, that's all.

Senator LAXALT. I thank the Senator. We will excuse the Attorney General. I have a couple of questions for the other people if you will stay on.

Mr. SMITH. Senator Rudman, I hope you are taking good care of Wilton Center.

Senator RUDMAN. Every time I go through Wilton Center, I go through and look for your birth place, but they have torn it down.

BORDER INSPECTIONS—CUSTOMS AND INS

Senator LAXALT. Mr. Nelson, currently 55 percent of the primary inspections are conducted by Customs officials at U.S. ports of entry. Does that figure conform with yours?

Mr. NELSON. Yes, sir.

Senator LAXALT. Yet, we have received evidence that 71 percent of the stops for immigration violations nationwide are made by INS inspectors who make up the remaining 44 percent of primary inspections. If these figures are correct, certainly they indicate that Customs is not really focusing all that much on immigration problems. Is the feeling of this subcommittee in that respect correct?

Mr. NELSON. Senator, it is a somewhat difficult issue, since Senator DeConcini, is pushing the Customs side of the issue. There is a cross-designation of inspectors at the border, so Customs and INS are doing both functions. Both agencies can certainly improve, although we think we are doing a good job. In fact, we think these people have done an outstanding job. We think that is an indication of the port-of-entry work at the borders that could be done under consolidation.

PRISON OVERCROWDING

Senator LAXALT. I thank you.

Mr. Carlson, with respect to the prisons, as you know, we have had a good deal of debate within the subcommittee and otherwise as to whether or not the prisons are overcrowded. I don't think anybody questions that, but I think the principal question is what do we do about it? We had a substantial amendment on the floor the other day, sponsored principally by Senators Specter and D'Amato, which didn't prevail, but it received substantial support. So in that overall connection and the request of this committee, the Bureau of Prisons submitted a multiyear plan on April 23, 1984. In it, you say that the current level of prison overcrowding of 28 percent is unacceptably high. I assume by any standard that would be the case. You said also at the end of the plan, "Overcrowding will be at the level of 13 percent, which is acceptable."

Is there any criteria in your agency or otherwise which gives us an acceptable or unacceptable level which would constitute overcrowding? How do you make that kind of determination?

Mr. CARLSON. Mr. Chairman, I have to say in all candor that it is a subjective judgment based on our experience. I have been in this business now for 28 years as a warden and otherwise, and this is a level which is tolerable. We feel 30 percent is intolerable as we have indicated before. From my personal experience, somewhere in the 10- to 15-percent range is something we can live with. As with college dormitories for example, you could add a few more students to dormitories, and you don't have a very bad problem. You add great numbers, and the problems are exacerbated.

CAREER CRIMINALS

Senator LAXALT. So somewhere, I guess, in the 10 to 15 percent range you determine professionally an acceptable range. Do you accept the thesis that Senator Specter and others contend regularly before us, that if we took career criminals off the street, it would dramatically reduce the incidence of street crime?

Mr. CARLSON. Mr. Chairman, I think there have been a number of studies—one by the Rand Corporation, which is probably the most noteworthy—which clearly indicate that career criminals contribute to a substantial amount of the crime problem in this country. I think the Department of Justice is making good headway in trying to prosecute and identify career criminals. Every State I know of has a similar program which concentrates its resources on the recurrent criminal.

Senator LAXALT. Do you know on a Federal level that we are doing the job we should be in terms of the judges, who, when they have a specific career criminal, wonder why we don't have a place for them? Is that a problem in the administration of justice as far as the judges are concerned as a practical matter, or is it irrelevant?

Mr. CARLSON. Mr. Chairman, I deal with Federal judges on a regular basis. I have never yet encountered a judge who felt he imposed a sentence based on prison capacity. They feel that it is their job to impose it.

Senator LAXALT. To impose it. You don't think that is a problem?

Mr. CARLSON. I don't think it is a problem.

PRISON CONSTRUCTION

Senator LAXALT. We know it. This committee would hate to see law enforcement slow down due to the lack of prison space. Quite simply, how can we assure we will have the space 2 to 3 years out? With the current level here, do you think you are in reasonably good shape in terms of facilities?

Mr. CARLSON. Mr. Chairman, we have the largest construction budget we have ever had in the Federal prison system. We will be adding approximately 5,000 beds in the next few years; 1,500 to 2,000 beds in the next 12 months. I think we are in good shape. I think that the comment Senator Rudman made is true; we need to build that institution in the Northeast region simply because of the anticipated population increase in the Northeast region.

Senator LAXALT. The statistics we have been reading lately certainly constitute welcome news to the effect that the crime rates are coming down drastically in the long term, in 10 to 20 years. What effect, if any, will that have upon our prison facilities?

Mr. CARLSON. I think it raises the obvious question. We don't want to overbuild. We don't want to expend resources unnecessarily. I don't think we are doing that in this plan. I think we are trying to address the problem on a systematic basis. As I said, we believe a projected 10- to 15-percent overcrowding rate to be an acceptable level. We will not have overbuilt facilities if there should be a downturn of convictions in the future. Certainly, for the next 4 to 5 years, we can expect to see a continuation of the population increase we are seeing currently.

CONTRACT DETENTION CENTERS

Senator LAXALT. What, if anything, is being done in connection with exploring private organization of detention of prisoners? Are we doing anything currently?

Mr. CARLSON. Yes, Mr. Chairman, we are. As a matter of fact, in the budget request and the supplemental which is also pending up here, we asked for funds for the Federal prison system for the first time to contract with a private-sector contractor to operate a minimum security type institution.

Senator LAXALT. Are those mainly high rises? Is that purely on a Federal level or is it being done on State and local levels, as well?

Mr. CARLSON. No, it is being done across the board.

Senator LAXALT. Is this becoming a substantial business out there?

Mr. CARLSON. It is just in its infancy, but there are a number of corporations. We had hoped to contract in Mineral Wells, Tex.

Senator LAXALT. Do they come with specs or do they simply build according to our specs?

Mr. CARLSON. In the case of Mineral Wells, Tex., it was a surplus military base which a private company bought and was going to build it for our use. The specifications were ours and they had to meet our specifications.

Senator LAXALT. Is this whole private thing mainly the use of existing facilities?

Mr. CARLSON. No, there are also several companies willing to build turnkey operations, if you will, to build a new operation for the Department of Justice or any other law enforcement agency.

Senator LAXALT. Where are we there? Will we have a leasee position there?

Mr. CARLSON. No, we would lease. We would contract with the private firm to take care of the inmates we placed on there.

Senator LAXALT. Do any of these private firms deal on the basis of selling to the Federal Government?

Mr. CARLSON. Some have expressed an interest they would.

Senator LAXALT. Lease option?

Mr. CARLSON. Lease option, lease purchase.

Senator LAXALT. Mr. Rooney, are you into this at all? Do you think there is anything we should be looking at in terms of lesser costs on acquiring facilities of this kind for public use through the private sector?

Mr. ROONEY. I think the program that Mr. Carlson has been working very closely with the Department on is about the best that we have been able to come up with so far. We are always interested in any suggestions.

Senator LAXALT. Let me ask you. You know, it is sort of a truism around here, and I don't know whether it is true or not, that if you go private you can usually make a better deal. Does that apply to prison facilities?

Mr. CARLSON. I think there are some advantages. If you invested in a long-term construction effort at the Federal level, you obviously have an institution for 50 or 100 years. With a private contract, it is much more flexible in terms of long-term usage.

Senator LAXALT. I don't know whether any distinction could be drawn between the ordinary office building. We have been heavily into that in GSA and between the facilities; obviously the specs would have to be a lot different, wouldn't they?

Mr. CARLSON. Yes, they would.

Mr. NELSON. Private organizations, likewise, contracts for defense, we have done that for a number of years, but just recently Houston completed private facilities that will have three of them.

Senator LAXALT. Are they defense facilities?

Mr. CARLSON. Detention centers, but I have not seen it, but it is reputed to be an outstanding facility with excellent conditions and services. We are very pleased with the potential of that facility.

Senator LAXALT. Ms. Herrington, I don't want you to feel excluded here at all in all this discussion.

Ms. HERRINGTON. That's all right.

[Laughter.]

Senator LAXALT. You don't mind?

Ms. HERRINGTON. I'm fascinated.

OFFICE OF JUSTICE ASSISTANCE

Senator LAXALT. How is everything going at Justice Assistance?

Ms. HERRINGTON. Just great. Thank you for asking.

Senator LAXALT. Is there anything the subcommittee should know from you in connection with your budget situation or anything else that we can transmit to our colleagues? All of us have a deep and abiding interest for the work you are doing.

Ms. HERRINGTON. Thank you. We have had a lot of support from your staff, and we certainly have appreciated that. Not anything that I know right now, Mr. Chairman, but I certainly would be happy to communicate it if anything comes up.

Senator LAXALT. The budget request submitted by the Department, I imagine, would substantially meet your requirements; is that correct?

Ms. HERRINGTON. Yes, sir, that is correct.

KEVIN ROONEY TESTIMONIAL

Senator LAXALT. Excuse me. I should make comment, and I'm glad it was brought to my attention. This subcommittee and many others have dealt for a long while with Mr. Rooney. The record should note, and I think all of us should note, that he is going to be leaving. We on the subcommittee, and I think I can speak for the whole Congress, deeply appreciate the high level of your competence and cooperation you have given us. We all wish you well.

Mr. ROONEY. Thank you very much, Mr. Chairman. I appreciate that.

SUBMITTED QUESTIONS

Senator Laxalt. The committee has additional questions which we will submit for your response.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

Response to Committee Questions

On April 4, 1984, the Subcommittee submitted a number of questions to be answered for the record in conjunction with the hearing at which the Federal Bureau of Investigation and the Drug Enforcement Administration testified. Although normal Committee procedures call for a response within 7 days, the Chair allowed the Department to have until May 1. As of this date (May 9) the Subcommittee has not yet received responses to those questions directed to the DEA, nor has the Subcommittee received responses to questions submitted by Senator Hollings regarding travel funds. Please provide an explanation for the delays on the part of the Justice Management Division in responding to requests by the subcommittee for timely submission of hearing material.

Responses to the DEA questions have been provided to the Subcommittee. As you are aware, a lengthy list of comprehensive questions was directed to DEA. To provide a complete and accurate response to these questions, DEA required an extraordinary amount of time. This task was complicated by the overlap of House hearings and an extensive set of questions and answers for insertion into the House hearing record. In regard to Sentor Hollings questions on travel funds, it took a considerable amount of time to manually research the travel records for the past year to accumulate the information requested. This information has now been provided.

Private Counsel

According to your justification, there will be a 21 percent increase in 1984 fees for private attorneys retained by the Civil Division to defend Government officials sued in their official capacity. What are the causes of an increase of this magnitude?

Bivens cases, suits against Federal officials and employees in their individual or personal capacity, continue to increase and be a major avenue pursued by those dissatisfied with governmental action. At the close of 1983, the total number of pending Bivens suits was 1,079. In 1983 there were only three adverse judgments against former or present employees. In 1985, Bivens actions are projected to increase by 40 percent, or an increase of 486 claims over the 1984 level. Bivens cases are also exceedingly complex and require anywhere from 20 to 50 percent more attorney time than other cases filed against the Government.

Corresponding to the rise in Bivens actions is an increase in the need to employ private counsel for individual defendants. Approximately 75 percent of Bivens cases involve multiple, individual defendants. As a case approaches the discovery and trial phases, it is often necessary for the defense of one defendant that another defendant be examined regarding matters pertinent to the individual's own defense. Such occasions create extremely difficult, complex ethical and professional problems which do not lend themselves to any easy solution. It may not be ethical for the Civil Division to represent multiple defendants in many of these situations. Therefore, the Division has the responsibility to provide for an increase in funding of private counsel cases in order to provide for representation for those in need. Increased funding for private counsel does much to alleviate this problem by permitting greater flexibility in resorting to private attorneys when real or potential conflicts threaten.

General Administration Field Positions

Between FYs 1983 and 1984, you substantially increased the number of positions in the field in your General Administration account, and reduced the size of your Washington office. What was the reason for this? Will this trend continue?

The reason for the increase in field positions is due to the transfer of the Immigration Judge function from the Immigartion and Naturalization Service to form the Executive Office for Immigration Review (EOIR). This newly formed component within the General Administration appropriation is composed of mostly Immigration Judges located in 25 field locations. This trend will continue to the extent that EOIR continues to add additional Immigration Judges.

Justice Management Division

Please provide a full budget breakdown for the Justice Management Division, including all reimbursements. Please provide a full budget breakdown of the Working Capital Fund. Please provide a full budget breakdown of the Office of Legal Policy (specifically the Office of Information and Privacy), including all reimbursements.

For each of the above, please indicate every source of funding and all disbursements.

1985 Justice Management Division Appropriation Summary
(Dollars in thousands)

Object Class	Exe. Dir.	Audit	Per. & Admin.	Mgmt. & Budget	Infor. Tech.	AIS	Total
FTP Pers.	$2,422	$3,792	$5,324	$4,667	$3,070	$82	$19,357
OTFTP Pers.	81	93	714	58	176	180	1,302
OT/Other	20	7	116	123	11	...	277
Pers. Benes.	253	412	683	522	348	26	2,244
Travel	68	361	124	35	58	120	766
Transp.	5	4	6	5	5	...	25
SLUC	560	795	1,230	1,074	537	...	4,196
Other rents	270	308	342	491	306	363	2,080
Printing	15	13	55	29	41	44	197
Other Svcs.	266	167	1,085	1,860	1,711	4,030	9,119
Supplies	38	25	106	86	863	88	1,206
Equipment	3	3	115	38	309	67	535
TOTAL	4,001	5,980	9,900	8,988	7,435	5,000	41,304
Positions	67	89	172	148	92	3	571
Total FTE	68	94	184	150	96	8	600

Executive Direction. This component ensures that the management initiatives of the President, the Attorney General and the Congress are implemented soundly and responsibly; the Administrative Counsel, Departmental Security and Equal Employment Opportunity activities are provided central direction and control; and administrative support services are delivered efficiently and effectively.

Audit. This component is responsible for directing the audit function for the Department. This responsibilty includes performing internal audits of all organizational units, programs and functions of the Department. Other functions include conducting or coordinating external audits of third party records and performance under grants, contracts, or other agreements entered into by Department organizations.

Personnel and Administration. This component is responsible for the development of Department-wide policy in procurement and contracts, personnel and administrative services. It is also responsible for the direct provision of administrative support in these areas to the offices, boards and divisions of the Department.

Management and Budget. This component is responsible for program management, financial management, management assistance studies and evaluations. This includes management and budget services to the Attorney General and the various operational programs.

Information Technology. This component addresses the function of oversight and improvement of the Department's automated information systems and communications activities. These activities include the Department's development of policy, standards and procedures relative to automated information systems, library services, development of automated office systems, records and forms management, development of legal information systems, and a comprehensive legal information retrieval network.

Automated Information Systems (AIS). This component addresses the development, acquisition and management of automated information systems within the Justice Management Division; in particular, the accounting, payroll, personnel and case management systems.

1985 Justice Management Division Reimbursements Summary
(In thousands of dollars)

Organization	Audit	Training	Motorpool	Cont. Rev. Com.	Fin. Mgmt. Info. System	Debt Col.	Lib. Sub.	Total
WCF.........	...	...	...	...	$38	...	$17	$55
USPC........	...	...	$4	...	5	...	17	26
GLA.........	...	$111	7	$8	187	...	756	1,069
ATD.........	...	5	...	27	49	...	264	345
USA.........	...	28	...	6	80	$191	2,710	3,015
UST.........	...	13	...	1	2	...	68	84
USMS........	...	18	...	18	89	...	...	125
CRS.........	...	3	4	...	8	...	28	43
OCDE........	...	...	...	...	...	...	11	11
FBI.........	...	20	...	...	...	...	...	20
DEA.........	...	113	...	12	...	...	...	125
INS.........	...	20	3	62	...	...	...	85
FPS.........	$297	108	3	47	630	...	...	1,085
OJA.........	...	5	...	7	...	...	...	12
TOTAL.......	297	444	21	188	1,088	191	3,871	6,100

1985 Summary of the Office of Information and Privacy
Summary of 1985 Requirements
(Dollars in thousands)

Object Class		Amount
11.1	Full-time permanent personnel compensation........................	$1,051
11.3	OTFTP personnel compensation...........	48
11.5	Other, personnel compensation..........	11
12.1	Personnel Benefits.....................	114
21.0	Travel.................................	1
22.0	Transportation.........................	3
23.1	SLUC...................................	106
23.2	Communications, utilities and other rents..............................	102
24.0	Printing...............................	15
25.0	Other Services.........................	33
26.0	Supplies...............................	14
31.0	Equipment..............................	2
	TOTAL..............................	1,500
	Positions..........................	27

Source of Reimbursements
(In thousands of dollars)

Organization	Amount
Federal Bureau of Investigation	$1,262
General Legal Activities	44
Federal Prison System	15
U.S. Parole Commission	84
Drug Enforcement Administration	55
Immigration and Naturalization Service	30
U.S. Attorneys	10
TOTAL	1,500

1985 Summary of the Working Capital Fund
(In thousands of dollars)

Object Class	Emp. Data	Tele-comm.	Data Proc.	Publi-cations	JBSS	Space Mgmt.	Prop. Mgmt.	Natl. Tele. Netw.	Total
11.1	$2,052	$1,779	$6,205	$1,389	$1,521	...	...	...	$12,946
11.3	76	39	204	...	...	...	...	...	319
11.5	75	57	144	10	12	...	...	...	298
12.1	233	203	708	162	167	...	...	...	1,473
21.0	8	35	57	8	3	...	...	...	111
22.0	2	1	61	2	2	...	...	...	68
23.1	345	254	1,005	215	276	...	...	...	2,095
23.2	73	26,700	9,583	397	7	...	...	...	36,760
24.0	161	28	61	25	...	...	...	...	275
25.0	587	1,794	6,870	237	1,626	$50,446	$254	...	61,814
26.0	47	44	780	531	17	...	...	...	1,419
31.0	...	347	430	428	42	...	...	$6,000	7,247
TOTAL	3,659	31,281	26,108	3,404	3,673	50,446	254	6,000	124,825

Employee Data provides for the development and maintenance of all Departmental information systems involving employment information and for the operation of a centralized payroll function. This activity provides for the biweekly payment of all employees; controls, processes and reports on Federal, State and local taxes, health insurance, FICA, retirement, bonds and other custodial accounts; processes all official personnel actions; prepares all official personnel statistics and accounting reports for pay and compensation.

Telecommunications consists of the telephone related elements of telecommunications; the automated inter-departmental communications and telegraph systems; and an automated nationwide communications network offering worldwide services including cryptographic facilities and audio-visual communications capabilities. The WCF manages 454 JUST terminals in various DOJ offices in Washington, D.C. and field offices through the country, and maintains approximately 7,000 Centrex II lines of the Department's internal telephone system for the Washington, D.C. metropolitan area.

Data Processing provides a large scale information processing facility with a broad range of modern data processing services for Departmental elements and selected outside organizations. It includes essential legal information retrieval, litigation support, caseload management, and financial and property management systems as well as electronic data processing and related services required by Departmental organizations and other Federal Government agencies. Specifically, the Justice Computer Service (JCS) operates four computer systems, two telecommunications front end processors, two micrographic processors and 248 disk drives which provide on-line storage capacity of approximately 45 billion characters. JCS evaluates, selects, implements and maintains all systems software required to make effective use of the equipment. This includes the selection, installation, maintenance and technological replacement of appproximately 1,100 individual ADP equipment components and 1,300 individual programs and program products.

Publications Services provides direct printing, duplicating, copying and publications distribution services to all elements of the Department. This includes printing done through the Government Printing Office (GPO). This activity represents the Department in its contacts with GPO, the Joint Committee on Printing and other appropriate agencies with regard to departmental publication requirements.

Justice Building Services provides for the operation and maintenance of the Main Justice Building. This acitvity, which was established May 1, 1983, under Delegation of Authority from the General Services Administration (GSA), provides the Department with a "Customer Relation" contact, placing emphasis on correcting tenant complaints; establishes priorities for providing facility services that are responsive to Departmental and individual tenant needs; determines need for major and minor building repairs and initiates corrective action; develops and implements an ongoing preventive maintenance program for all operations equipment; develops plans and specifications for contractual building services and participates in negotiations; and acts as liaison with GSA in all delegation related matters.

Specifically, JMD has the responsibility for the operation, maintenance, repair, preservation, alteration, furnishing, equipment and custody of the buliding.

Although the maintenance and operation of the buidling has been delegated to DOJ, GSA still retains responsibility for the operation of several systems. These include: fire alarm, smoke detection, and the steam and the electrical transformers. DOJ is required to pay GSA for the maintenance and repair of the aforementioned systems.

Space Management involves initial quarterly payments to the GSA for space charges. Costs are reimbursed from other accounts on the basis of space usage.

Property Management provides for the inventory of new and refurbished office furniture with receipts for users being applied against replacement items. No personnel are involved in this activity.

Justice Telecommunications Network. The Working Capital Fund (WCF) is requesting for 1985 an appropriation of $6,000,000 to install a National Telecommunications Network. This network will consolidate the Department's five major networks and will be monitored by a Centralized Management Network Control facility. Consolidation is necessary to reduce the costly duplication of communications facilities for autonomous and application-specific networks as well as the rising communications cost resulting from the divestiture and reorganization of the American Telephone and Telegraph Company (AT&T).

The new communications network will support the new communications technologies while minimizing sensitivity to uncontrollable tariff increases.

The estimated 10-year cost for installation and operation of the private packet network is approximately $38,000,000 as compared to $95,000,000 over the same period for the continued operation of the current system. This assumes a conservative 10 percent tariff increase per year. The annual operations costs, once the system is in place, are expected to be about half of that currently experienced.

1985 Working Capital Fund Schedule of Reimbursements Received
(In thousands of dollars)

Reimbursements from other
DOJ Organizations:

Organization	Service Rendered	1985 Estimates
General Administration	Computer, Telecom., Printing, Payroll, SLUC, Property	$5,155
General Legal Activities	"	14,627
Antitrust Division	"	5,395
U.S. Parole Commission	"	592
Community Relations Service	"	828
U.S. Attorneys & Marshals	"	44,000
Federal Bureau of Investigation	"	
Immigration and Naturalization		237
Service	"	9,232
Office of Justice Assistance	"	1,079
Drug Enforcement Administration	"	4,796
Federal Prison System	"	6,355
Clearing Accounts - All	"	29,161
SUBTOTAL		121,457

Reimbursement from other
Government Agencies:

Agency	Service Rendered	
Various Departments and Agencies	Computer, Telecom., Printing	3,368
TOTAL		124,825

Justice Building Service

Last year JMD received responsibility to operate and maintain the Main Justice Building and the Hoover Building.

Which specific functions and services are handled by JMD and which remain the responsibility of GSA?

A formal Delegation of Authority agreement was signed between the GSA and the DOJ on May 1, 1983, outlining the authorities delegated from GSA to DOJ. Principally, JMD has the responsibility for the operation, maintenance, repair, preservation, alteration, furnishing, equipment and custody of the buildings.

Although the maintenance and operation of the building has been delegated to DOJ, GSA still retains responsibility for the operation of several systems, These systems include: fire alarm, smoke detection, and the steam and electrical transformers. DOJ is required to pay GSA for the maintenance and repair of the aforementioned systems.

With the assumption of these new duties, has there been an offsetting reduction of payments to GSA?

GSA bills DOJ for the type of space, e.g., office, parking, upgraded, and the square footage occupied. The Standard Level User Charges (SLUC) billing is based on the records maintained by DOJ of the current space assignment for the buildings. GSA then makes available to DOJ a level of funding to administer the Main Justice and J. Edgar Hoover Buildings consistent with the amount that GSA would have allocated if the buildings remained under GSA jurisdiction. The Delegation of Authority stipulates that GSA will reduce the SLUC bill by 34 percent with not less than $10,743,000 provided to DOJ to operate the Main Justice and J. Edgar Hoover Buildings for each year of the five year period of the agreement. For the first full year of the Delegation of Authority, DOJ was allocated $4,169,000 for the operation of the Main Justice Building and $6,574,000 for the operation of the J. Edgar Hoover Building. Since GSA was unable to provide detailed cost records, DOJ is still attempting to determine the appropriate funding level required to properly operate and maintain the Main Justice and J. Edgar Hoover Buildings. We are currently in negotiation with GSA's Central office to attempt to increase our annual SLUC rebate.

Federal Justice Research Program

Your justification for the Federal Justice Research Program presents an impressive list of accomplishments. Why, if the program is so valuable, are you requesting that we transfer all but $18,000 in FY 1984 for other purposes in the General Administration account?

How much was carried over in FY 1984?

How much do you project will carry over in FY 1985?

The Department still strongly supports the continuation of the Federal Justice Research Program (FJRP). However, because of Congressionally imposed reductions (such as the one percent and the SLUC) it has been necessary to use this funding to offset the impact of these reductions. Since FJRP funding is provided by a specific earmarking within the appropriation, a language change is necessary in order to use this funding for other purposes. The Department believes that FJPR can continue its valuable program activities with prior year unobligated balances that have been carried forward. The Department proposal would provide $16,000 in new budget authority but an additional $523,000 would be available from prior year funds. The Department believes that this level of funding would be sufficient to contiue FJRP activities. The Department does not anticipate any additional carry forward funds to be available in FY 1985.

Multistate Regional Intelligence Sharing Systems

If Congress continues to fund the Multistate Intelligence program, do you recommend that the program be funded out of OJARS rather than the General Administration account? If so, why?

The Department believes that if State and local law enforcement agencies believe that the Multistate Intelligence program is an important resource, these localities should be willing to finance its operation. However, if the Congress continues to support this program it would reduce the administrative problem associated with the program if the funding were provided directly to the Office of Justice Assistance (OJA). Currently the funding for this program is provided within the General Administration appropriation, however, OJA, through a reimbursable agreement, manages the program. If the funding were provided within the OJA appropriation the existing reimbursable billing process would be eliminated and therefore would reduce some of the administrative burdens.

Increased Litigation Costs

You are requesting a supplemental for your General Legal Activities account "for increased litigation expenses in response to the Right to Financial Privacy Act and the U.S. Supreme Court decision in Sells Engineering."

Would you please specifically explain how compliance with these two mandates will increase your litigation expenses?

As a general rule, prosecuting agencies for the federal government are not required to pay any fees or expenses relative to the production of documentary evidence. It is a well established rule of law that in a criminal case, the public is entitled to every man's evidence and that the government is not obliged to pay for the production of evidence needed to prosecute a criminal offense. The only exceptions to this rule occur when a court of competent jurisdiction finds a particular subpoena unduly burdensome and orders the government to pay for expenses related to the production of subpoenaed records or when the custodian of the records subject to subpoena is a financial institution as defined in the Right to Financial Privacy Act. As described in the budget justification, the latter exception has only been in effect since 1980, and in each fiscal year since 1980 the Criminal Division has incurred expenses averaging nearly $55,000 per year in reimbursements to financial institutions as required by the Right to Financial Privacy Act. Prior to 1984, these expenses were absorbed from general operating funds, but the strain on Division finances in 1984 makes it necessary to request supplemental funding this year.

How many Sells Engineering hearings do you anticipate participating in?

There are two typec of hearings that result from Sells; (1) hearings in which the Department must defend its use of grand jury material in cases which preceded the Sells decision, and (2) hearings pursuant to Sells to obtain grand jury materials for use in new cases.

Currently, a number of our largest civil fraud cases involve evidence originally obtained by grand jury and used civilly in accordance with pre-Sells case law. In these cases, challenges to the Government's suits have been raised based upon the Sells decision and the Government has participated in some form of hearing to resolve the issues. To illustrate the severity of the problem, we currently have five major cases which involve several hearings each and about $100 million in Government claims that are in jeopardy because of Sells.

Although we have won two cases in the district court, the facts in most of these cases favored our position, and the issues may again be raised on appeal. In one case still awaiting decision, our attorneys spent 2,455 hours during a five-month period defending against challenges to our use of evidence affected by Sells. This amounts to three attorneys working full-time for the entire five-month period on this single issue.

The second type of hearing involves applications for permission to use grand jury materials for new cases pursuant to the Sells decision. We do not yet have sufficient experience to be able to calculate or estimate the resource expenditures this effort will entail. There is a high likelihood that the costs associated with such an order will vary significantly depending on the practices adopted by the different jurisdictions. Unfortunately, even the decision not to seek a court order requires considerably more legal analysis than before, simply because of the complexities and risks resulting from Sells.

How many cases involving the Right to Financial Privacy Act to you anticipate participating in?

The Division is unable to identify the number of cases which involve a Right to Financial Privacy Act (RFPA) inquiry for the reproduction of individual account records. In 1983, 382 payments, in the total amount of $61,445, were made to financial institutions for the reproduction of individual account records. There is no record of how many of these records eventually become involved in cases prosecuted by the Criminal Division. Some cases may have already been initiated; some cases may never be indicted; and others may be initiated at some point in the future. Moreover, the Division's caseload management information system does not record the existence of an RFPA inquiry in individual case records. The only way to answer the question positively would be to review each case file for an inquiry covered by the RFPA. Given the limited amount of time available to answer the question and the lack of resources to apply to such a task, it is not possible to determine how many cases involved RFPA inquiries in the past or how many are likely to in the future.

Isn't the money needed to "rectify the shortfall in needed litigation support funding" actually a restoration of last year's Congressional cuts?

Funding requested in the 1984 supplemental was not intended to rectify the shortfall in needed litigation support funding. Rather, it provides funding to offset the restrictions on acquiring grand jury transcripts in civil cases. For example, we could be forced to entirely duplicate Grand Jury investigations into (1) a three-year investigation of thousands of fictitious bids for oil leases involving hundreds of leasehold and royalty interests; (2) a $2.7 million Anti-

Kickback Act investigation lasting two years to trace illicit corporate payments through bank accounts in Switzerland and other countries; (3) a $5 million contract fraud investigation which lasted 2-3 years and in which the documents are so voluminous that an aircraft hangar was required for storage; (4) a $2-2.5 million fraud investigation involving hundreds of HUD-insured mortgages and several corporate shells; and (5) an investigation concerning bribery of officials of an oil company owned by a foreign government.

SLUC

Please indicate for the record, the level of savings for SLUC if the rates were held to the FY 1984 rates. If rates were allowed to increase by 7 percent.

The Department has requested $185,496,000 for SLUC payments in 1985. This request was constructed by costing the 1985 square footage at GSA established 1984 rates and results in an increase of $46,810,000. The return to the prior level contained in the 1984 Appropriation Act would reduce requirements by the $46,810,000 increase currently established.

The 1984 estimate, established by a seven percent increase over 1983 estimates, is $134,779,000. If the 1985 rates were allowed to increase by seven percent over this level, the Department requirement would drop to $148,121,000. This would reduce the present 1985 request by $37,375,000.

1985 ADP Enhancements

Please list for the record all your ADP enhancements for FY 1985 for every account.

The Congressional budget submission entitled "Congressional Authorization and Budget Estimates FY 1985" dated January 1984, does not include the summary exhibit entitled "U.S. Department of Justice, Information Technology Systems Exhibits for the FY 1985 Budget Request". This document is transmitted separately to the House Committee on Appropriations. A copy of that report has been provided to the Senate Appropriations Committee.

Agencies are required to prepare this report annually in accordance with the format specified in OMB Circular No. A-11 (Section 43). Information includes obligations for voice and data communications as well as obligations for data processing. The ADP costs are identified in Exhibit 43A by categories (capital investment, personnel, equipment rental, space and other operating costs, lease of information technology equipment, space, supplies and other, commercial services, interagency services, intra-agency services and other services). This exhibit also includes an accompanying narrative, which describes significant ADP systems, including planned (i.e., FY 1985) enhancements.

Appellate Resources

What are the total amount of resources from every division devoted to doing appellate work?

Estimates for total Department resources involved in handling various aspects of litigation before the U.S. Supreme Court, the U.S. Courts of Appeals and the U.S. Court of Appeals for the Federal Circuit for 1984 and 1985 follow:

Estimated Appellate Resources
(Dollars in thousands)

	1984			1985		
Organization	Pos.	WY	BA	Pos.	WY	BA
Solicitor General.......	45	54	$3,445	45	54	$3,615
Tax Division............	90	91	4,473	90	91	4,853
Criminal Division.......	49	46	2,823	49	46	3,081
Civil Division..........	90	96	5,430	95	100	6,397
Land and Natural Resources Division....	27	28	1,355	27	28	1,475
Civil Rights Division...	30	30	1,553	30	30	1,646
Antitrust Division......	23	23	1,141	23	23	1,234
U.S. Attorneys..........	351	341	18,215	351	341	19,478
TOTAL..................	705	709	38,435	710	713	41,779

Criminal Division

Where are the Strike Forces located? How many positions are in each office?

The Criminal Division maintains within its Organized Crime Prosecution program a number of Strike Forces. Resources allocated currently by location follow.

Strike Force Location	1985 Positions Authorized
Brooklyn, New York	23
Boston, Massachusetts	20
Buffalo, New York	16
Chicago, Illinois	22
Detroit, Michigan	11
Miami, Florida	29
Newark, New Jersey	15
Philadelphia, Pennsylvania	15
Cleveland, Ohio	12
Los Angeles, California	12
San Francisco, California	12
Kansas City, Missouri	12
New Orleans, Louisiana	7
Las Vegas, Nevada	9
TOTAL	215

Why do you have two separate programs, Narcotic and Dangerous Drug Prosecution, and the Organized Crime Drug Enforcement within the Criminal Division? How do these two programs differ?

The Narcotic and Dangerous Drug Prosecution program existed prior to the establishment of the Organized Crime Drug Enforcement Task Forces. It is concerned in general with the development of prosecutiorial strategies involving drug enforcement, with the conduct of criminal prosecutions against drug offenders and with supporting prosecutorial efforts conducted by other agencies.

The Organized Crime Drug Enforcement Task Forces were established in 1983 and immediately began to require the assistance of the Division in obtaining electronic surveillance authorization, in acquiring evidence located in foreign jurisdictions, in securing protection for witnesses whose safety was threatened, and in accomplishing other purposes. The Organized Crime Drug Enforcement program is designed to provide sufficient resources to enable the Division to assist the Drug Task Forces to the full extent that they require.

WPPSS Supplemental

Please provide a breakdown for the WPPSS supplemental (Civil Division, $6,709,000). Your budget anticipated hiring new personnel as of what date? For each month, the supplemental is delayed past that date, how much will be saved?

The breakdown of the $6,709,000 for WPPSS is as follows:

Personnel Compensation and Benefits	$737,000
Travel and Transportation	270,000
Automated Litigation Support	4,754,000
Other (e.g. rents, supplies, equipment, etc.)	948,000
TOTAL	6,709,000

The 1984 supplemental requested 33 full-time positions and full-time workyears to provide the Division the necessary resources to protect the United States' interest in the Washington Public Power Supply System (WPPSS) bond default litigation.

The budget anticipates new hiring as of February, making the lapse rate 33 percent. An additional lapse of $80,000 per month for personnel costs and benefits could be applied to the request.

INTERPOL Members

Please provide a list of the 135 member countries of INTERPOL.

Algeria
Angola
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belguim
Benin
Bolivia
Botswana
Burma
Burundi
Cameroon (United Republic)
Canada
Central African Republic
Chad
Chile
China (Republic of)
Colombia
Congo
Costa Rica
Cuba
Cyprus
Denmark
Djibouti
Dominica
Dominican Repbulic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Ethiopia
Fiji
Finland
France
Gabon
Germany (Federal Republic)
Ghana
Greece
Guatemala
Guinea
Guana
Guyana
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland (Republic of)
Israel
Italy
Ivory Coast
Jamaica
Japan
Jordan
Kampuchea
Kenya
Korea (Republic of)
Kuwait
Laos
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Morocco
Nauru
Nepal
Netherlands
Netherlands Antilles
New Zealand
Nicaragua
Niger (Republic of)
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Portugal
Qatar
Romania
Rwanda
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Somalia
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom
United States of America
Upper Volta
Uruguay
Venezuela
Yemen (North)
Yugoslavia
Zaire
Zambia
Zimbabwe

Antitrust Division

Last year, the Antitrust Division requested $1,100,000 to pay for services rendered to the Department of Labor. While the Committee provided the resources on an emergency basis, it directed the Divi-

sion not to provide any further service to any other agencies except on a reimbursable basis. Has the Division followed this Congressional direction? Did the Division provide any services to other agencies on a reimbursable basis?

Yes, the Division has complied with the Congressional direction. The Antitrust Division is currently terminating all support to the Department of Labor and does not and has not provided any services to other agencies.

What is the Department's position on legislation to provide antitrust immunity for cities and local governments, along the lines of the current exemption enjoyed by the States?

In testimony before the Senate Judiciary Committee on April 24, 1984, the Department of Justice proposed that Section 2 of S. 1578 be amended as follows (material to be deleted is in brackets and material to be inserted is underlined):

> SEC. 2. The Federal antitrust laws shall not apply to any law or other action of, or official action directed by, a city, village, town, township, county, or other general function unit of local government in the exercise of its regulatory powers, including but not limited to zoning, franchising, licensing, and the establishment [of monopoly public services,] or provision of public services on an exclusive or nonexclusive basis in a manner designed to ensure public access or otherwise to protect the public health, safety, or welfare, but excluding [any activity involving] the purchase or sale of goods or services on a commercial basis by the unit of local government in competition with private persons, where such law or action is valid under State law, except to the extent that the Federal antitrust laws would apply to a similar law or action of, or official action directed by, a State. For purposes of this section, the term "Federal antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

When do you plan to complete your civil investigation on the computerized airline reservation system?

We will not be able to decide as a final matter how to complete the investigation until we see the outcome of a Civil Aeronautics Board rule-making that is considering industry-wide rules in this area.

Where are the field offices of the Antitrust Division located? How many positions are in each office?

Location of Field Offices	Positions
Atlanta, Georgia	25
Chicago, Illinois	22
Cleveland, Ohio	18
Dallas, Texas	21
New York, New York	31
Philadelphia, Pennsylvania	26
San Francisco, California	32
TOTAL	175

Foreign Claims Settlement Commission

You requested $1,011,000 for the Foreign Claims Settlement Commission. What is your timeframe for completion of all your existing programs?

At the present time, the Commission has three existing programs.

1. The claims program involving Czechoslovakia under Public Law 97-127 will be completed on October 31, 1984.
2. The Claims program involving Vietnam under Public Law 96-606 will be completed on February 25, 1986.
3. The Commission is currently authorized to receive, determine and provide for the payment of claims of ex-prisoners of war of the Vietnam conflict and civilian American citizens who were captured and interned by a hostile force in Southeast Asia during the Vietnam conflict. Some Vietnam Prisoner of War (POW) claims may remain over the next two to three years. There may be claims filed based upon asserted POW status of individuals listed as missing-in-action.

Where does the money to pay the claims come from?

Available funds have their sources in international settlements, or liquidation of foreign assets in this country by the Departments of Justice or Treasury, and from public funds when provided by the Congress.

Victim/Witness and LECC Coordinators

Do you intend that the new Victim/Witness Coordinator's and LECC Coordinator's responsibilities will be handled by the same person in each U.S. Attorney's office?

The intent of our budget request is to have one person perform both the Victim/Witness and Law Enforcement Coordinating Committee (LECC) coordinator functions. To that end, we will prepare one standard position description detailing the duties of both roles. However, while we anticipate that nearly all U.S. Attorneys' offices will have only one Victim Witness/LECC Coordinator, we do not initially rule out slight deviations. For example, a U.S. Attorney might choose to hire two part-time employees on a job sharing basis. Only one full-time equivalent workyear would be expended by this office, but two people would be employed. We try to allow some latitude and flexibility to each U.S. Attorney because of the varying geographic size and other unique features of each of our districts.

Threat Analysis Group

You are requesting resources to create a Threat Analysis Group in the U.S. Marshals Witness Security Program in response to a December 14, *1981, Governmental Affairs Committee report. How high a priority is this enhancement since the report is over 2 1/2 years old?*

The priority assigned to this enhancement is high, especially in view of environmental changes over the past few years. The original reasoning for recommending such a unit was sound when the Governmental Affairs Committee report was issued, for it was to have provided for a formal assessment process for determining the validity, nature, and degree of a threat. The Marshals Service presently receives information from other agencies verifying that a threat exists. However, no agency will assess the extent or degree of the threat. This assessment is critical to determining the best course of action to avoid endangering an individual.

A Threat Analysis Group (TAG) is primarily required in the area of judicial security. When a threat to a judge or other member of the judiciary is received, the Service immediately provides 24-hour protection for the threatened individual. In complex cases, the function of the Threat Analysis Group would be to assess the potential danger which exists so that appropriate security precautions can be taken.

In addition, since the time of the original recommendation, the Administration has pressed its efforts against crime, particularly against major criminal organizations. The work of the Law Enforcement Coordinating Committees and the Organized Crime Drug Enforcement Task Forces have resulted in an increasing number of protected witnesses who were members of traditional organized crime families, nontraditional organized crime groups (drug-distribution oriented), and motorcycle gangs, all of which have substantial resources at their disposal and a strong interest in eliminating testimony against them. The strategies and tactics of these groups have become increasingly more sophisticated; coupled with the pervasive nature of the groups, this trend has made it imperative that an appropriate response -- a specialized, centralized threat analysis unit -- be made by those responsible for ensuring the safety of Government witnesses.

Witness Security Program Evaluation

On March 17, 1983, GAO issued a report, "Changes Needed in Witness Security Program," which recommended that the Attorney General develop an information system and procedures to allow for appropriate evaluation of the program. Has this been done?

The Witness Security program has automated its active case records, as well as its financial records from 1975 to the present. The Division is also in the process of microfilming all case records. The microfilm index is designed to be fully compatible with the program's minicomputer and will allow for complete automated record retrieval.

The Marshals Service's Office of Internal Audit conducts on-site inspections of the Witness Security Headquarters and field operations. This provides the Service and the program with an on-going evaluation process.

Federal Excess Property Program

Please describe the Marshals Service's Federal Excess Property Program. Is surplus property given or sold to the States? What types of surplus property are involved? What U.S. Government agencies are involved?

Since its implementation in 1982, the U.S. Marshals Service's Federal Excess Property program has been well received by State and local governments. As of March 1984, a total of 205 facilities in 60 judicial districts have received an estimated $3.1 million in excess federal property. Participation in the program is limited only to those State and local detention facilities which have agreed to house federal prisoners. In some instances, jails which had terminated detention services have indicated interest in renewing expired agreements in order to obtain excess property.

Working with local detention officials, U.S. Marshals Service (USMS) district inspectors locate desired excess federal property at various regional General Services Administration (GSA) and Department of Defense (DOD) facilities. A formal request to transfer the property is processed through USMS headquarters and the appropriate GSA Regional Utilization Officer. Program guidelines require that the property acquired must be used specifically to improve the conditions of confinement in detention facilities, and that the value of property acquired each year cannot exceed the annual Federal detention costs in the facility.

All accountable items remain the property of the USMS and must be inventoried and surveyed on-site periodically by USMS inspectors.

Examples of excess property under the program include medical equipment (for jail infirmaries), office equipment and furniture, military jumpsuits and footwear (for inmate clothing), linens and fire resistant mattresses, consumable supplies (i.e., paint for renovation efforts), and security and emergency equipment (such as base station radios, fire extinguishers, emergency generators, closed circuit TV, etc.).

The USMS Excess Federal Property program differs from the surplus property program in that it affords State and local detention facilities the opportunity to screen and acquire a much better selection of property which would not become available to them through GSA surplus property channels.

Protection of Witnesses vs. Witness Security

How does the "Protection of Witnesses" program within the Fees and Expenses of Witnesses account differ from the Marshals Service Witness Security program? How do the two programs relate?

The "Protection of Witnesses" program within the Fees and Expenses of Witnesses appropriation provides for the financial maintenance of protected witnesses and their families, including: subsistence expenses; housing, medical and dental expenses; travel; documentation expenses for identity changes; one-time relocations; costs for obtaining employment; and other miscellaneous expenses. This program does not include funding for positions or workyears.

The Marshals Service's Witness Security program provides for salaries of Service personnel responsible for the physical protection and maintenance of witnesses in the Witness Security program. Responsibilities also include management of the "Protection of Witnesses" budget described above. The Witness Security program is included in the Salaries and Expenses appropriation, U.S. Attorneys and Marshals.

In short, the Witness Security program includes funding for personnel to administer the program, whereas the "Protection of Witnesses" program provides for financial maintenance of the witnesses within the program.

Planned Safesite Facilities

What type of safesite facilities do you intend to construct?

The Marshals Service intends to continue construction of safesites in geographical locations where our statistical data indicate that such a facility would be fiscally beneficial to the administration of the Witness Security program. These facilities will continue to be located in federally owned buildings, preferably within close proximity to the courts and offices of the federal prosecutors. The additional safesites will be similar to predecessor sites in that they will be self-contained and self-sustaining facilities capable of providing unquestionable security to government witnesses, prosecutors and agents. The Service also intends to construct an Assessment Center through which all witnesses and their family members will enter the program. The Assessment Center will provide a calm and serene setting where the witness can familiarize him/herself with the program, its guidelines and services.

Pilot Program - Alternatives to Incarceration

According to your justification for FPS, you initiated a pilot program in 1983 in Washington, D.C., for "offenders with sentences of up to one year for whom institutionalization is unnecessary but probation or a regular CTC program is either not appropriate or adequate." Please provide more details of this program. Was it a success? Do you plan to continue to expand the program?

After a year's operation of the Hope Village Community Correctional Center, we believe the program has been a qualified success, and that with some modifications, this and similar programs can be useful alternatives to incarceration. Attached is an analytical report on the first year's operation of Hope Village.

We plan to expand the program. We are currently working on a community contract center program in Detroit, Michigan which we hope to activate by July 1984. In addition, we are working with the Federal Courts to determine the feasibility of establishing similar contract programs in the San Francisco Bay area and Atlanta, Georgia.

PRELIMINARY EVALUATION

ONE YEAR EVALUATION OF THE BUREAU OF PRISONS COMMUNITY CORRECTIONAL CENTER

SUMMARY. Following a trend toward establishing alternatives to incarceration for lower security level offenders, the Federal Bureau of Prisons introduced such an alternative in March of 1983 in the form of a contract facility located in Southeast Washington, D.C. This report, the first in a series of evaluations of the program, describes population characteristics and operational aspects of the Hope Village Community Correctional Center (CCC), focusing on 34 inmates who have been released from the program over its first year of operation. These 34 inmates include 24 who successfully completed the program, and 10 who were terminated before serving their full sentence and who have been placed in traditional camp settings. Reasons for program failure include repeated positive urines, multiple infractions of program rules, and unwillingness to find employment. The major findings are discussed below.

POPULATION CHARACTERISTICS. The typical CCC inmate is a 32 year old, black single male (6 of the 34 inmates were women) with a high school degree. The most frequent offense types were "white-collar" crimes (e.g., fraud, embezzlement and forgery) and drug-related crimes. Most CCC inmates were serving six month sentences, and many had sentences of three months or less.

A comparison of these inmates with norms from all Security Level 1 institutions revealed similarities between the Hope Village population and the camp population on offense type, sentence length, age, education level, and past criminal and job history variables. These findings, particularly those involving past criminal history variables, strengthen the argument that the Community Correctional Center incarcerates offenders who would normally be sent to camps, and thus is a true alternative to a camp. However, some discrepancies were found, most notably for race (most CCC inmates are black, while most camp inmates are white) and marital status (CCC inmates are predominantly single, camp inmates married). In addition, CCC inmates tended to have shorter sentences than camp inmates, and offenses such as traffic violations, extremely rare in camps, were more frequently found in the CCC group, suggesting there may be some differences in the populations being served by the two kinds of facilities.

Closer examination of CCC inmates' past criminal behavior (using estimates of their Salient Factor Scores) and present offense severity showed that, although the majority of CCC inmates (23 out of 34) would "probably" have been incarcerated in a traditional setting had the CCC not been available, incarceration was "questionable" for ten inmates with high Salient Factor Scores and low offense severity scores. Therefore, while the CCC is primarily serving a population of offenders comparable to those found in camps, it is also serving a group that may or may not have been incarcerated had this alternative not existed. Further research is needed to determine whether this "marginal" group is composed of offenders being sentenced to Hope Village as an alternative to both traditional probation and incarceration, or whether some offenders are being diverted from probation to incarceration in the CCC.

PROGRAM OPERATION. CCC program elements, such as community service placement, inmate employment, payment of subsistence and participation in programming were examined, and the following results were found:

- The group of 34 inmates paid a total of $8,430 in subsistence fees, which averaged approximately $5.49 per day per inmate (for those inmates employed and paying subsistence). This fee defers some of the costs of the program, although a thorough cost-effectiveness analysis, comparing CCC costs to those of camps (and taking into account hidden costs, such as transportation), is outside the scope of the present report.

- The total number of community service hours contributed by 24 inmates who participated and for whom the number of hours is available is 2,195, averaging 92 hours of community service per inmate. Agencies such as D.C. Village and J.B. Johnson Nursing Home participated in the program, and inmate placements include mealtime assistant, patient escort and maintenance worker.

- The majority of inmates (23 of 34) were employed full-time at commitment, and four of those unemployed found jobs during incarceration. Of those not employed full-time during incarceration, two attended school full-time, and six of the seven were program failures who exhibited other problems (multiple incident reports, positive urines) while incarcerated. For employed inmates, professional/"white-collar" positions and "blue-collar" jobs were equally represented. The average annual salary earned by CCC inmates was $15,314.

- All inmates received individual counseling, averaging one session per week, and 24 of 34 attended group counseling sessions as well. Of six inmates needing jobs at commitment (excluding one unemployed inmate who found a job immediately following commitment, two who were in school full-time, and two who were in the program for very short time periods), five attended at least one job skills class. In addition, eight of 11 inmates who had a past/current problem with alcohol (as recorded in their presentence investigation reports) attended AA classes. However, only six of 12 inmates with an identified past/current drug problem attended NA classes, which may indicate a need for an emphasis on identification of inmates needing drug counseling and placement of these inmates in appropriate programs.

Finally, several differences were found between those inmates who successfully completed the program and those who were terminated from the program and placed in a traditional setting. Most notably:

- Program failures were more criminally sophisticated than "successes", when past criminal history for the two groups was examined, and program failures had a shorter period of time on the job at arrest (an average of 6 months) than did program successes (43 months).

- More program failures were unemployed at commitment, more remained unemployed throughout their incarceration, and those "failures" who were employed had a lower average salary than the CCC group as a whole and the "successes" in particular.

- Program failures were more heavily involved with drugs than program successes, as indicated by: presentence investigation reports of past and current drug problems (9 out of 10 failures had some identified problem with alcohol/drugs); a greater number of positive urines for the "failure" group (5 inmates from the success group had a total of six positive urines, while 9 program failures had 19 positive urines); and more incident reports involving drugs for program failures.

In summary, the CCC appears to be serving the population for which it was intended, although a closer examination of the selection process may be needed to determine whether some inmates are being diverted from traditional probation programs. Inmates in the CCC program are paying subsistence fees, and are being placed in community service agencies, jobs and, for the most part, programs that suit their needs; however, there may be a need for better identification of inmates with drug problems and for improving the placement of these inmates in drug treatment programs. The CCC Program Director has indicated, in an informal interview, that efforts are currently being made to enhance drug treatment placement and programming for inmates with this need. Finally, the ten program failures appear to differ from program successes mainly in terms of drug abuse, criminal history and employment status/history. This information may be useful in evaluating the selection criteria for CCC placement, as well as for determining and implementing appropriate programming for inmates with documented drug and employment problems.

Prisoner Education Funding

Last year this Committee added $2.5 million to the budget of the National Institute of Corrections "to expand and improve vocational and basic education among prison inmates." Please outline how this money was spent. Why are you not requesting additional funds for this program?

The $2.5 million added by the Senate to the 1984 request for the National Institute of Corrections (NIC) was considered a one-time pilot project and will not actually be used for several months. The NIC is distributing to the field a supplemental to its Annual Program Plan that describes the funds available and how to apply for them. Funding for these projects is covered under the agency's mandated activities of technical assistance, policy and program development, training and information dissemination. Although it is too early to evaluate the use of these funds, the Institute has formulated a two year documentation/evaluation plan of these projects.

A summary of the funding plan for vocational and basic education is as follows:

Technical Assistance
- Direct technical assistance - $200,000
- Technical assistance grants - $500,000
- Computer training initiative - $600,000

Policy Studies and Program Development
- Literacy programs - $200,000
- Computer-based and computer-assisted training in corrections $200,000

Training
- Literacy training in corrections - $200,000
- Computer training for correctional institutions - $200,000

Documentation and Evaluation - $225,000

Information Dissimination and Staffing
- Clearinghouse services - $50,000
- Staffing - $125,000

Total - $2,500,000

The NIC Advisory Board has not yet recommended an extension of the program. The Bureau believes that a funding request to extend the project would be premature until the NIC has an opportunity to evaluate the merits of the pilot effort.

New Prison Construction

Are you having any difficulties locating a site for your new prison in the Northeast? Approximately where do you intend to locate that facility?

Yes, the Bureau had encountered difficulties in locating a site in the Boston/Washington corridor for construction of a Federal Correctional Institution. We enlisted the services of the Corps of Engineers to help identify potential construction sites and they have responded with a list of approximately 40 parcels of land. We are currently reviewing this listing and are hopeful that one of these parcels will satisfactorily meet our requirements.

What is the status of the Sheridan, Oregon site acquisition? How will you use this property once it is acquired?

While the Bureau of Prisons initially expressed an interest in the property at Sheridan, Oregon, because of the substantial disparity between the Federal Government's appraised market value of the property and the owner's asking price, and the long period of time that has transpired without successful negotiation, it appears that no agreement can be reached with the owner. In fact, the Bureau is now preparing a proposal to reprogram most of the $5 million which was appropriated for acquiring property in Sheridan to complete the renovations at the recently acquired Federal Prison Camp (FPC), Duluth, Minnesota. The completion of these renovations will enable the Bureau to make full use of the 500-bed capacity planned for this facility, i.e., we will be able to house 370 more inmates than the 130 inmates currently housed there. The renovations can be accomplished in a comparatively short period of time and the resulting reduction in institutional overcrowding will be significant.

Community Anti-Crime Program

Please describe your Community Anti-Crime Program (Office of Technical Assistance, Community Relations Service).

Over the past two years, the Community Relations Service (CRS) has responded to an increasing number of requests from community and civic leaders and from local officials to assist them with community crime prevention programs. Though citizen cooperation is widely viewed as an essential element in successful anti-crime work, the comparative lack of such cooperation in many minority communities is a major barrier to crime prevention, as well as to apprehension and conviction of perpetrators. Chronic tensions between minority communities and criminal justice system agencies are a leading cause of major disorders, frequently triggered by allegations of police brutality.

The Community Relations Service-Urban League (CRS-UL) Crime Prevention program is based on the premise that communities can organize to focus local energies on efforts to combat and deglamorize crime. Community residents and community institutions, working with the local criminal justice system, can identify and pursue actions they can take to increase community control of criminal behaviors. These steps can be taken in addition to, and despite, the ongoing debate about the root causes of crime.

The theme of the program is that "Crime Is Not Part of Our Black Heritage," focusing on the issue of Black-on-Black crime. Data indicates that nearly 80 percent of the crime in Black communities is committed by Blacks. The CRS-UL program was designed to raise this issue in the Black community, to educate people about the high rate of victimization, and to redevelop or promote a sense of community standards and control over crime-related behavior. It is divided roughly into phases, the first being a media campaign, the second, civic responsibility education through the schools, and the third, a neighborhood dispute resolution center. The latter would be geared toward heading off confrontations between neighbors before they could escalate into violence and diverting perpetrators of lower level crimes from entry into the traditional criminal justice system.

No funding was provided for the program; the philosophy being that the problem required longer-term efforts than a one or two year funded program which ends when the money runs out and staff leave for other jobs. This has presented a problem, requiring a longer start-up period, in that staffing was not always available at the Urban League offices.

Several cities have instituted media compaigns, using public service announcements on both radio and television, and local newspaper coverage. "Crime Sundays" have been held where one Sunday is selected for ministers of local churches to give their sermons on the issue of Black-on-Black crime. Community symposia have been held on the topic, such as the one in Miami which was attended by nearly 200 people. Interns have been secured in New Haven and San Francisco to staff the projects.

Posters supporting the program theme are being developed for distribution by the National Urban League. Also, discussions are being held with both national and local corporations who are interested in providing resources to the program. Other cities have expressed interest in participating and are under review.

Cuban/Haitian Entrant Care and Processing

Why did the Administration place the Cuban/Haitian Entrant Care and Processing program under the Community Relations Service? What does this special program have in common with the other activities of CRS?

Executive order 12341, January 21, 1982, transferred responsibility for activities authorized by Section 501(c) of the Refugee Education Assistance Act to the Department of Justice (DOJ). The transfer occurred shortly before the last resettlement center, Fort Chaffee, was closed, and the remaining entrants were transferred to DOJ facilities. The essential nature of the resettlement program changed greatly at that point. The program had resettled most of the entrants. The entrants remaining were more difficult to resettle. Those entrants required a more concentrated level of services and a more structured resettlement situation. Most of these entrants had been institutionalized in Cuba. Others had engaged in criminal activity after arriving in the U.S.

DOJ already had responsibility for the detention of those Cuban entrants rejected for release, and the revocation of parole of certain of them who had engaged in criminal activity after release. DOJ also had responsibility for release decisions. Upon transfer of the resettlement funding to DOJ by the January 21, 1982, Executive Order, management of the remaining work dealing with Cuban/Haitian influx processing problems was centralized in DOJ.

For the first half of FY 1983, DOJ kept the resettlement staff in place in the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) and continued to task HHS for health activities. On March 6, 1983, DOJ (with OMB's concurrence) transferred these positions and, therefore, the direct operations of the resettlement function to the Community Relations Service (CRS). This transfer did not include the health activities of the Public Health Service (PHS). These health functions continue to be administered by PHS through an interagency agreement transferring funds from DOJ to HHS.

The transfer of direct operations occurred because DOJ concluded that the program could be managed more effectively and efficiently if the direct operations were consolidated with the authority and funding. In the case of the health-related activities of PHS, DOJ concluded that continuing reliance on the expertise of PHS in health matters was appropriate.

During FY 1983, CRS was selected to administer the Cuban-Haitian Resettlement Program. This program was transferred to CRS for three reasons: The increasing severity of the caseload problems demands a high degree of coordination with other agencies of the Justice Department; the increased difficulty of gaining community acceptance to resettlement of Cuban or Haitian entrants; and the CRS knowledge of communities which could become potential resettlment sites.

CRS efforts have met with a high degree of success with the new program in the past year. The U.S. District Court in Atlanta has commended CRS for its ability to place all entrants available for resettlement, reducing a large backlog. Three-hundred-seventy-six Cubans have been resettled since CRS took responsibility for the program in March, 1983.

CRS has worked with several communities in efforts to reduce community tension about the placement of projects in their areas and continues to put into action those skills effectively used in the more traditional CRS work.

Please provide for the record the anticipated costs of the Cuban/ Haitian Entrant Care and Processing program over the next five years.

This is a difficult question to answer with any degree of certainty. Following is a listing by year of anticipated costs beginning with 1986, the only year for which we have defined needs. The projections beyond 1986 assume neither growth nor diminishment of the program, but merely a 4.5 percent inflationary factor for each year:

Year	Projected Needs
1986	$28,801,000
1987	30,097,000
1988	31,452,000
1989	32,867,000
1990	34,346,000

The Public Health Service, which provides services to Cuban and Haitian entrants, anticipates needing almost $14,000,000 more by 1986 to provide long-term health care for a portion of this Cuban population. However, this projected need for an increase in funds is not certain at this time.

Bureau of Justice Statistics

For the Bureau of Justice Statistics (BJS):

How much of your base budget is dedicated to mandated or ongoing projects?

In FY 1984, an estimated $14,361,000 (94.3 percent) will be obligated from the BJS base budget for mandated or ongoing projects. In FY 1985, an estimated $15,386,000 (96.1 percent) will be spent from the BJS base budget for mandated or ongoing projects.

How much is allocated for new or discretionary studies?

In FY 1984, an estimated $860,000 (5.7 percent) will be spent on new or discretionary studies. In FY 1985, an estimated $620,000 (3.9 percent) will be spent on new or discretionary studies. Typical of the new or discretionary studies funded are:

1. Exploration of the feasibility of linking correctional data with FBI criminal history information to establish a statistical series on recidivism of persons unconditionally released from prison on parole.

2. Development of techniques for deriving management and administrative statistics for State and local law enforcement operations.

3. Development of a standardized crime classification system to facilitate more detailed reporting on crime and its consequences to victims.

4. Testing and validation of statistical methodology for guiding parole and probation officers in assessing the risk of releasing charged or convicted offenders to the community as a means of reducing prison overcrowding.

5. Development of a data base covering persons who are released while awaiting trial, who are rearrested, or who failed to appear in court.

6. Statistical analysis of the characteristics and patterns of criminal behavior of career criminals (multiple recidivists).

Presidential Commission on Organized Crime

Regarding the Presidential Commission on Organized Crime:

Please provide a list of accomplishments achieved during the Commission's first year.

When the President's Commission on Organized Crime was announced by President Reagan on July 28, 1983, in the Rose Garden, its only asset was an elaborate and important mandate from the Chief Executive and twenty Commissioners. There was no staff, office space, equipment, supplies, empowering legislation, and charter to define its mission. In short, the Commission had to start from scratch and, in a relatively short period of time, has accomplished much.

As it heads into its second year, a firm administrative and conceptual foundation has been created for the Commission which will enable it to accomplish its mission. An ambitious but practical hearing schedule has been devised which, by this time next year, will take the Commission to every corner of the nation in its effort to expose the varied activities of organized criminal enterprises to the American people. Investigators are already in the field making liaison with Federal, State and local law enforcment personnel and actively conducting investigations. Task forces have been formed and regional committees assigned to better analyze organized crime on a region-by-region basis. Interim reports, which outline some of the findings of the staff on specific subjects, have passed the conceptual stage and are being written at this moment.

A capsulized outline of the accomplishments in the Commission's first year follow:

- Working space for the Commission's headquarters staff has been procured and they occupy some 10,000 square feet at 1425 K Street, N.W., Suite 700. The working space is adequately furnished, equipped, and supplied. Special security measures have been installed to ensure the confidentially of the investigation.

- A satellite office in New York City has been established in 26 Federal Plaza, Room 2-122. The offices are close to the chambers of the Commission's Chairman which enable the staff to conduct work in a major metropolitan area which is the center of traditional organized crime activities in this nation.

- A highly experienced prosecutor of organized crime matters was hired to be Executive Director and Chief Counsel to the Commission. This was the beginning of an effort on the part of the Chairman and the Commissioners to hire the most qualified staff possible in order to carry out a quality investigation and submit the type of report expected by the President. A highly selective recruiting campaign was initiated. The staff is now intact and it includes some of the nation's most experienced organized crime prosecutors and investigators. Together the Commission and its staff bring many years of insight and experience to our investigation.

- A charter detailing the responsibilities and structure of the Commission and its relationship to the DOJ was developed, signed and delivered to Congress. Legislation designed to give subpoena power, contempt, and immunity authority was also conceived, submitted to Congress and introduced in both houses. The Commission views this legislation as crucial since it cannot possibly conduct its mission as the President intended without it. We are pleased to announce, at this writing, that the House of Representatives has passed this empowering legislation unanimously and it is now before the Senate. We are confident the Commission will receive this important legislation before long.

- The Commission has embarked on a number of projects. As a result of a recent hearing which we held in New York City, we have begun an effort to devise new means to attack the money laundering problem. The Commission has formed a task force on money laundering which includes, among others, representatives of law enforcement and the banking industry. The representatives have agreed to gather and identify bankers from around the country familiar with banking operations to work directly with the Commision staff and other members of the task force to devise ways by which money laundering can be better detected by the financial community and law enforcement notified.

- Another project is directed toward State and local law enforcement. A task force has been set up to identify ways that State and local law enforcement officials can better combat the menace of organizd crime through revised legislation, regulations and procedure.

- Liaison has been established with Federal, State and local law enforcement officials at all levels which will enhance not only the investigation but also the understanding and support of the Commission's mission, structure, and operational methods. Contact has been initiated with State and local governments as well as law enforcement associations around the country in order to create mutual understanding and support.

- Although the final report is not due to be submitted to the President until March 1, 1986, a combined group of selected Commissioners and staff members are already planning interim reports that will reflect findings of the Commission on various criminal activities of organized crime. It has also made much progress in drafting preliminary outlines of topics to be covered in the final report.

- Organized crime members know that they can only prosper as long as public indifference remains high. The chief figures of organized crime fear public exposure from the media because it strips away the mystique of power with which they surround themselves. Also, public disclosure of the sometimes subtle infiltration of organized crime into many institutions of society should make the point that every citizen has a stake in its eradication. The President told the Commission to expose the activities of organized crime to the American people and it has done so this past year. Liaison has been established with every national media organization and four mass mailouts have already been sent to newspapers and the electronic media throughout the country to inform them of hearings, Commission activities, and the dangers of organized crime. Our open hearings will grow in frequency and intensity as the months go by. We are confident the Commission will receive the type of media attention and public concern that organized crime deserves.

How many hearings have you held? Where? Focused on what topics? Please provide a schedule of anticipated hearings over the next year.

While awaiting the subpoena and other enabling powers from Congress, the Commission has developed plans to conduct an intensified series of hearings with one tentatively scheduled in June. Starting in September, they will average one per month throughout the life of the Commission. While the subject matters and locations cannot be revealed at this time, these hearings will focus on every major activity of organized crime in both its traditional and emerging sense. They promise to be quite revealing to the American people and will help the Commission immensely as it gathers information for and final recommendations to the President. The investigations for these hearings are well underway in every corner of the land.

Thus far, the Commission has conducted two public hearings. The first in Washington, D.C., last November included testimony from the Attorney General, the Director of the Federal Bureau of Investigation and the Administrator of the Drug Enforcement Administration. These officials gave their views to the Commission about organized crime, what their agencies are doing about it, and suggested ways in which the Commission could assist their efforts.

In its second hearing in New York City two months ago, the Commission explored the problems caused by financial laundering schemes. It also looked into one of the questions asked by the President. "How much money does the mob have and how do they control it?" The Commission received testimony from a number of witnesses including a federal agent with direct experience in money laundering who outlined a successful money laundering scheme to the Commission. The Commission also heard from a top organized crime figure and an official from the U.S. Department of Treasury.

Why is your travel budget over 10 percent of your entire budget?

Executive Order 12435 which created this Commission, mandates a two-year study of organized crime both nationally and region-by-region. With only one office in Washington and a satellite office in New York, the Commission's staff will be required to travel extensively to accomplish this task. For example, attorneys and investigators will be required to travel while doing background work on chosen topics.

Staff and Commissioners will then travel to those sites chosen for actual hearings. The work of the Commission requires extensive information gathering and analysis, which cannot be accomplished without a considerable amount of travel for staff, Commissioners and consultants.

Please provide a further breakdown of the $1,067,000 for "other services".

Given the sweeping nature of our mandate, it is essential that our highly skilled "permanent" staff be supplemented by expert consultants. Consultant fees will comprise the major part of the "other services". As you may know, consultants provide services which require a high level of expertise not available in the regular work force and are of a purely advisory nature. Though the Commission and its staff ultimately will be responsible for our final product, it is plain that the necessary gathering and analysis of raw data nationwide will require all manners of assistance, including the highly qualified consultants described here. In addition, smaller amounts for expected other services requirements (e.g., repair and maintenance contracts, court reporting service, security requirements contracts, etc.) are included.

Please provide a list of the membership of the Commission.

Brief biographies of our Commissioners are attached.

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

Suite 700
1425 K Street, N.W.
Washington, D.C. 20005

March 9, 1984

MEMBERS OF THE COMMISSION

The President's Commission on Organized Crime has 19 members. Its chairman, Irving R. Kaufman of New York City, has been a Judge of the U.S. Court of Appeals for the Second Circuit since 1961. He served as Chief Judge from 1973 to 1980. From 1949 to 1961 he served as a Judge of the U.S. District Court for the Southern District of New York. Judge Kaufman was born June 24, 1910.

Other members of the Commission:

PHYLLIS TERESA ARANZA of Houston Texas, is a lieutenant with the Homicide Division of the Houston Police Department. She is pursuing a Masters Degree in Criminal Justice at Sam Houston State University. She was born September 23, 1945.

JESSE A. BREWER, JR., of Los Angeles California, has been a member of the Los Angeles Police Department since 1947 and its deputy chief since 1981, with responsibility for supervision of numerous major crimes investigations. He was a member of the Task Force on Disorders and Terrorism of the National Advisory Committee on Criminal Justice Standards and Goals named by the Law Enforcement Assistance Administration (1976). He was born October 11, 1921.

CAROL CORRIGAN of Oakland, California, is a Deputy District Attorney assigned to the Senior Felony Staff for Alameda County and an Assistant Professor of Law at the University of California Hastings College of Law. She served as Special Consultant and Staff Editor to the Presidential Task Force on Victims of Violent Crime in 1982 and has authored a number of publications relating to criminal law issues. She was born August 16, 1948.

JUSTIN J. DINTINO of Hilltop, New Jersey, is executive officer of the New Jersey State Police Department. He is general chairman of the Law Enforcement Intelligence Unit and serves on the Organized Crime Committee of the International Association of Chiefs of Police and the Policy Board of the Middle Atlantic-Great Lakes State Organized Crime Law Enforcement Network. He was born October 30, 1928.

WILLIAM J. GUSTE, JR., of New Orleans, Louisiana, is Attorney General of Louisiana. He has been a member of the Governor's Commission on Law Enforcement and the Administration of Justice since 1974. He served as a member and president of the New Orleans Metropolitan Crime Commission in 1956-1957 and as a member and chairman of the Juvenile Court Advisory Committee of Orleans Parish in 1961-1963. He was born May 26, 1922.

JUDITH RICHARDS HOPE of the District of Columbia, is a partner in the law firm of Paul, Hastings, Janofsky and Walker. She was associate director of the White House Domestic Council in 1975-1977. She was born November 30, 1940.

PHILIP MANUEL of Alexandria, Virginia, is president of the Phillip Manuel Resource Group, a consulting firm that assists corporate clients and law firms with investigations involving economic crimes. He was chief investigator of the Senate Subcommittee on Investigations in 1968-1979. He was born November 9, 1936.

THOMAS MCBRIDE of California, is associate dean of the Stanford University Law School. He was an associate Watergate Special Prosecutor in 1973-1975 and later served as Inspector General of the Departments of Labor and Agriculture. He was born February 8, 1929.

EUGENE METHVIN of McLean, Virginia, is a senior editor of "Readers Digest," has written about crime and the law for more than 30 years and contributed to the passage of the Organized Crime Control Act of 1970. He was born September 19, 1934.

EDWIN L. MILLER, JR., of La Jolla, California, is a District Attorney for San Diego County and will assume the presidency of the National Association for District Attorneys in August. He is past president of the California Association of District Attorneys and was U.S. Attorney for the Southern District of California in 1966-1969. He was born January 17, 1926.

MANUEL J. REYES of Miami, Florida, is an attorney and executive vice president of the board of directors of Miami International Hospital. He also served as chairman of the Hispanic branch of the Miami Organized Crime Commission and, as a leader of the Hispanic community, he mobilized citizen groups to press for crackdowns on the influx of illegal drugs into the Miami area. He was born July 29, 1924.

REPRESENTATIVE PETER W. RODINO, JR., of New Jersey, is chairman of the House Judiciary Committee. He was born June 7, 1909.

CHARLES H. ROGOVIN of Philadelphia, Pennsylvania, is a professor of law at Temple University. He was president of the Criminal Justice Associates in 1974-1977 and president of the Police Foundation in 1970-1972. In 1974-1976 he was a member of the Massachusetts Organized Crime Control Council. He headed the Organized Crime Committee of the Criminal Law Section of the American Bar Association in 1971-1972 and was administrator of the Law Enforcement Assistance Administration in 1969-1970. He was born January 24, 1931.

BARBARA ANN ROWAN of Alexandria, Virginia, is a lawyer and President of Rowan Associates, investigative consultants to businesses and lawyers. She was formerly an Assistant United States Attorney in the Eastern District of New York (1971-1974) and served as staff attorney for the House Ethics Committee's Korean influence-buying investigation (1977-78). She was born September 6, 1938.

FRANCES A. SCLAFANI of West Islip, New York is presently Chief Administrative Assistant District Attorney for Interagency Liaision of the Suffolk County District Attorney's Office and the first woman to hold this position. She is also Associate Director of the National District Attorney's Association. She was born August 25, 1949.

-

SAMUEL K. SKINNER of Lake Forest, Illinois, is a partner in the Chicago law firm of Sidley and Austin. He was chairman of the Governor's Fraud Prevention Commission in 1977-1979. He was U.S. Attorney for the Northern District of Illinois overseeing major organized crime investigations in the area. He was Assistant U.S. Attorney in the Northern District in 1968-1975. He was born June 10, 1938.

POTTER STEWART of the District of Columbia. Justice Stewart was an associate justice of the Supreme Court from 1958 until his retirement in 1981. He was born January 23, 1915.

SENATOR STROM THURMOND of South Carolina. Senator Thurmond is chairman of the Senate Judiciary Committee. He was born December 5, 1902.

JAMES D. HARMON, JR., Executive Director and Chief Counsel of the Commission, has been a prosecutor since 1971, including six years in the New York County (Manhattan) District Attorney's office and more than five years with the Organized Crime Strike Force in Brooklyn, New York. He served as Assistant Attorney in Charge of the Strike Force, heading the investigations of numerous organized crime figures in the New York City area. Harmon was Senior Litigation Counsel in the U.S. Attorney's Office for the Eastern District of New York when he joined the Commission on Organized Crime. He was born August 18, 1943.

# # #

Inadequate ADP Problems

Department-wide, please describe major failures or foul-ups that occurred in FY 1983 or so far in FY 1984 due to inadequate ADP systems.

The Department does not keep statistics on the number of major ADP failures experienced. From time to time, significant problems may occur due to inadequate ADP systems. Typically, those responsible for the ADP systems will employ back-up systems or manual support to ensure that critical tasks are completed. The Department continually monitors the effectiveness of ADP systems to ensure that they are functioning properly.

Recently, there have been several instances where the lack of ADP systems has caused serious problems. For example, the Immigration and Naturalization Service (INS) had experienced considerable difficulty in tracking the people entering and exiting the country, e.g., the foreign student population. To combat this problem, INS devoted substantial resources in FY 1984 to develop an automated tracking system which enables the Service to determine who is entering or exiting the country.

A second example from INS where 1984 ADP improvements virtually eliminated a serious problem was the development of an automated "Lookout Book". This book is used by enforcement officials to identify potential violators at the point of entry. This new system reduced the delay in revising the Lookout Book from nine weeks to on-line instantaneous updating.

Immigration and Naturalization Service

Why is it necessary to move the New York service processing center from an INS-owned facility to a GSA site? Assuming you do move, what would happen to the former INS facility?

On April 26, 1984, INS relocated its New York detention activity from 136 Flusing Avenue, Brooklyn, New York to 201 Varick Street, New York, New York.

On May 1, 1975, INS took over occupancy of the former U.S. Navy "brig" located at 136 Flushing Avenue, Brooklyn, New York. Originally, plans to move the New York District Office from 20 West Boradway, New York City to a new location with no space allocated at the new quarters for an alien detention facility, necessitated the immediate finding of a suitable location. Building 300 at 136 Flushing Avenue was found. Its most appealing feature was a fifth floor former Navy "brig". The "brig" was equipped with sufficient custodial and security hardware to enable INS to move in immediately without incurring heavy expenses in initial renovation costs. From the outset, INS occupied Building 300 as only a temporary site until the permanent alien detention facility at 201 Varick Street could be completed. Accordingly, INS never owned 136 Flusing Avenue. Rather, INS was delegated by GSA to be holding agency of this property on a conditional basis until such time as appropriate space became available at 201 Varick Street.

At present, GSA is actively negotiating the sale of 136 Flusing Avenue to the City of New York, Department of Corrections.

Please explain the realignment of roles and responsibilities of personnel in INS Central and regional offices.

In early 1982 INS undertook a major review of its decisionmaking process, functions, and organizational structure. The major conclusion of that review was that major reorgainzation was not necessary but that some minor organizational changes and some related management improvements would be beneficial. As a result of the review, some organizational streamlining was undertaken. The number of associate commissioners reporting to the Deputy Commissioner/Commissioner was reduced from five to four by placing the Comptroller under Management, and several of the "special emphasis" offices reporting to the Deputy Commissioner/Commissioner were consolidated or placed under other existing offices. Basically, the roles of these offices did not change as a result of the reorganization.

The review also found the need to redefine and clarify the roles of Central and regional office managers. This resulted in streamlining the regional office structuree. The Deputy Regional Commissioner position was eliminated and the Associate Regional Commissioners for Enforcement and Examinations were combined under a single Associate Regional Commissioner for Operations. The role of the Regional Commissioners was strengthened by their inclusion in policy development and decisionmaking at the national level. At the same time, policy restatements and reinterpretation of national policy by regional office managers was eliminated. The regional appellate review function was centralized to further allow regional staff to focus on their reemphasized program management role. Creation of a strengthened management by objectives system and a centralized policy directives office further helped clarify the roles of the Central and regional offices.

INS' current inventory of pending casework in naturalization is nine months, although the acceptable level, according to your justification is four months. Please describe the steps you are taking to reduce this backlog.

With the attorney consolidation program and the merger of the naturalization and adjudication programs, the naturalization program overnight lost forty-eight experienced examiners who were transferred to the General Counsel's office. These positions had to be backfilled as do the positions of the remaining attorneys in the naturalization program who are being gradually transferred to the General Counsel's staff. Thus the program lost a great deal of expertise over a short period.

The examiners who were used to backfill these positions had to receive additional training in naturalization processing. We have provided and we continue to provide training for our examiners and the strides we have made in the training of our personnel can be seen by the increases in completion rates nationwide. As these examiners gain experience they will be in a position to complete more naturalization/citizenship work. In addition, the institution of the Balanced Adjudications System, the reallocation of resources and using the remoting capabilities that exist throughout the Service, will relieve some in-district personnel for performance of naturalization duties.

An indication that production is on the upswing is evidenced by March naturalization figures, which reflect a 30 percent increase over March 1983 totals (38,575 v. 29,716) and 20 percent over March 1982 (32,203).

How much cash does the INS expect to advance to aliens in FY 1985 for meals and lodging while enroute? Do you recoup this money?

Generally, INS does not advance any cash to aliens for meals and lodging while enroute. To the extent possible, explusions are scheduled so that no overnight lodging is required for aliens. Usually, when aliens are bussed to the border under safeguards, either bag lunches are provided through a contract at the start of the run or a scheduled stop is made at a pre-arranged location where hot meals have been prepared. The money is not recouped; aliens are not charged for meals while in INS custody.

Alien Detention Center - Oakdale

The Alien Detention Center in Oakdale, Louisiana, has been built with Federal Prison System funds and is scheduled for activation in October 1985. When the facility does become operational, who will be responsible for the day-to-day operation? Will Federal Prison System resources still be required even though the facility will be used primarily for immigration violators?

When the Federal Detention Center, Oakdale, Louisiana is activated, the Federal Bureau of Prisons will be responsible for the day-to-day operation and administration of the facility. Consequently, the Bureau of Prisons will require additional resources for this purpose in a future budget request. The Immigration and Naturalization Service will handle those activities related to alien removal including all deportation and voluntary departure matters as well as the coordination of the aliens' transportation into the facility and, once processed, out of the United States.

FPS - Payment for Rewards

In your justification, you request language that would authorize the Federal Prison System to make payments for rewards. How much do you expect to pay for rewards in FY 1985 and for what purposes?

Based on past experience of Bureau payments of rewards for capture of or information leading to the arrest of an offender charged with a criminal offense who has escaped from a Federal facility, we estimate an expenditure in 1985 of approximately $3,000. The authority to make such payments by the Director, Federal Bureau of Prisons, is contained in 28 CFR 95(e).

Office of Professional Responsibility

How will the Office of Professional Responsiblity be affected if a statutory Inspector General is created for the Justice Department?

Throughout Congressional consideration of the extention of the Inspector General Act of 1978, the Department has asserted that the continued effectiveness and credibility of the Department's Office of Professional Responsiblity (OPR) is absolutely essential. OPR is charged with the overall responsibility of investigating personnel misconduct, fraud, waste, and abuse in the Department of Justice (DOJ). Its inquiries are conducted independently and with authority beyond that of offices in other agencies.

Legislation which simply extends the Inspector General Act of 1978 is objectionable as it will disrupt the core functions of the Department and undermine the accountability of its officials for the Department's activities. In this manner, such a proposal would interfere with and impede OPR's ability to carry out its responsibilities. It would affect adversely the Department's efforts to ensure that the most effective mechanism of investigating misconduct, fraud, waste, and abuse is in place.

The kinds of misconduct which arise in the DOJ do not involve financial misconduct, but rather a misues of investigative or litigation authority--matters of personnel rather than financial integrity. This kind of matter is best investigated by the OPR; not by the kind of Inspector General which other agencies require. OPR investigations require specialized knowledge and legal and law enforcement expertise. For example, the judgments about the exercise of prosecutorial discretion that are made by OPR ordinarily are not within the province of Inspectors General in other agencies.

OPR has complete freedom to determine the scope, depth, direction and duration of its investigations. Since investigations into allegations of grand jury abuse and prosecutorial misbehavior account for a major portion of OPR's caseload, it has access to the Department's most sensitive files and to grand jury testimony and records. The Counsel also can compel testimony by means of a grand jury. The subpoena power of an Inspector General does not extend to testimony, nor does an Inspector General have access to grand jury material. As the Counsel's information gathering powers exceed those of an Inspector General, OPR's merger with a Departmental Inspector General would weaken the present mechanism to deal with personnel integrity.

Such a merger would threaten the current flexibility of OPR provided by its non-statutory status. Although OPR has only eight people on its staff, it has the ability to draw on all the resources of the Department. Any legislation could only threaten this flexibility. For instance, the Counsel can use the Federal Bureau of Investigation (FBI) to investigate administrative as well as criminal complaints. Unlike an Inspector General, OPR can direct the course of an FBI investigation.

Land and Natural Resources Division

It appears that 1983 was a successful year for the Land and Natural Resources Division in minimizing the dollar amount that judgments exceeded the government's conceded liability by 25 percent compared to 58 percent in 1982. Can this success be repeated in future years? To what can it be attributed? Better case preparation, training, etc.?

The Division believes that the improved performance in 1983 can be attributed in great part to better case preparation. Better case preparation has been facilitated by more manageable caseloads that allow the attorneys to devote more time to individual cases and by the cooperation given by client agencies, particularly in obtaining the high caliber expert witnesses we consider necessary in presenting the best possible case for the government. Attorney training and the growing depth of experience of our staff are also significant factors.

While there will undoubtedly be fluctuations in the level of performance over future years, we believe that the 1983 level can be repeated and that the average over a number of years will be much closer to the 1983 level than the 1982 level.

In regard to the Land Division's increasing workload, have any evaluations been conducted to date on the various sections which identify opportunities for increased efficiencies? What particular areas look most promising?

The Division recently begun a series of comprehensive management analyses aimed at increasing efficiency in each of the litigating sections. The first analysis was just completed, and several improvements involving space allocation, internal administrative functions, orientation and training have been implemented.

As a result of our experience with this project, the Division plans to initiate a separate study of the use and potential use of paraprofessionals in the litigation process. This area looks extremely promising since so many of the cases handled involve large amounts of documentary evidence, coordination with clients agencies, and similar administrative tasks for which it appears that increased use of paralegals and legal technicians will increase efficiency. Moreover, paraprofessional positions are less expensive to fill than attorney positions.

Victim/Witness - LECC Coordinators

Is it necessary to set up a Victim/Witness LECC coordinator in each of the 94 U.S. Attorneys offices, or could we regionalize the activities and thus reduce the number of resources needed?

The Law Enforcement Coordinating Committee program was established by the Attorney General during the first year of this administration. The requirement that each district establish its own committee was quite specific.

Several years ago, we experimented with the establishment of coordinating committees on a state-by-state basis. Since many states contain several districts these state-wide committees did not work out as well as we had anticipated because the law enforcement needs and capabilities of agencies vary from district-to-district. There is a great deal of administrative responsibility, logistical planning, scheduling, and recordkeeping which must be maintained. The paperwork becomes too cumbersome to be kept at an organizational level larger than the district level.

The Executive Office for U.S. Attorneys recently received some criticism from another Congressional committee for not keeping LECC records as well as we should. We feel that the only way we can accomplish accurate reporting requirements is to have one person perform these tasks for each committee.

In addition to the LECC requirement, the implementation of the Victim/Witness Protection Act has been imposed upon us. This program also has a great deal of administrative responsibilities that each U.S. Attorney must perform. It would be very difficult to regionalize this activity because its focus is on a district-by-district basis, and each U.S. Attorney has certain requirements with which he or she must comply.

U.S. Attorneys' Offices Review

How often or on what type of cycle does the Field Activities Section visit and review U.S. Attorneys offices?

What are the most common deficiencies in operations that have been noted? What was the impact of these problems and how have they been corrected?

The Field Activities Section reviews the operations of each United States Attorney's office approximately once every two years. The goal has been an 18 month cycle, but administrative constraints have resulted in a two-year process.

The most common problems in United States Attorneys' Office operation include not using to full advantage effective case management techniques and available automated equipment to support case management. This has been addressed in other offices, by arranging for closer consultation between the United States Attorney and the Executive Office for United States Attorney's staff responsible for management information systems.

The reviews have also served to improve the supervisory skills of United States Attorney office supervisors. This has been accomplished through on-the-spot advice by Field Activity reviewers and by seminars on office management given separately for United States Attorneys and supervisory Assistant United States Attorneys.

Finally, the reviews have found that some offices do not have adequate office space to function most effectively. This has been addressed by arranging for meetings and other communications between the United States Attorney, the Executive Office for United States Attorney's Facilities Mangement Staff, and the General Services

Administration. Another consequence of inadequate space, at times, has been questionable security arrangements. In addition to seeking to remedy the space needs that have created this problem, the specific security concerns have been directed to the Executive Office's Security Program Manager and the Department of Justice Security Staff.

Subsistence Rates for Protected Witnesses

How are the subsistence rates established that are paid by the U.S. Marshals Service to protected witnesses and their families? Please list your current payment.

Witness funding schedules are based on cost-of-living statistics compiled by the Bureau of Labor Statistics, Department of Labor, predicated on family size and geographic location.

In 1974, the Marshals Service and the Justice Department discontinued publication of the Maintenance Guidelines in other than a "need-to-know" format to preclude the multitude of program management problems which were encountered with publication of the information. For example, should the guidelines become public, witnesses and potential witnesses would press for relocation to geographical areas where funding is highest. The Service requests that this information remain sensitive.

Office of Internal Inspections

During 1983, the Office of Internal Inspections opened 160 criminal and administrative investigations concerning the conduct of Marshals Service personnel. The number of investigations represents about 7 percent of all personnel and seems rather high. What were the results of these investigations in terms of disciplinary actions?

The vast majority of Service personnel carry out their duties in a very honorable and professional manner. The Service requires standards of conduct which are as high as, or higher than those in other agencies due to the nature of our mission. Therefore, when an allegation of wrongdoing surfaces, the Service takes immediate action to investigate the matter and to determine if the allegation is in fact true.

The results of the Marshals Service's criminal/administrative cases completed follows:

- 44 cases resulted in letters of caution, letters of instruction, or official letters of reprimand
- 18 cases resulted in suspensions
- 15 cases resulted in removal
- 2 cases resulted in indefinite leave pending criminal indictment
- 2 cases resulted in criminal action
- 7 cases are open and unresolved

All the other cases were unsubstantiated, and no other action was taken or the subject resigned prior to disciplinary action.

Case Management Systems

The Department is requesting, through JMD's budget, an increase of $4,956,000 and 3 positions (JMD, p. 43) "to monitor, design, and implement the various JMD automated information systems." These dollars and positions include resources for the development of a responsive (p. 39), compatible (p. 39), and uniform (p. 43) departmental case management system. At the same time, at least seven other compenents are independently requesting funds to implement, operate, or expand their own case management systems. For example, the United States Attorneys Office is requesting an increase of $1,856,000 and 21 positions for the "implementation and ongoing operation" of its case management system (U.S. Attorneys, p. 36).

Your justification for a departmental case management system refers to recommendations from both the "President's Private Sector Survey on Cost Control" (p. 43) and a 1983 GAO report (p. 44). In regard to recommendations of both studies, what steps has Justice taken to assure that users' needs will be met by the proposed system? Please provide a copy of your users' needs assessment.

The term "users' needs" should be clarified vis-a-vis a Department-level case management system. In this context, the "users" are senior management personnel and policymakers within the litigating organizations, and the Deputy and Associate Attorneys General.

There are differences between the "Departmental Case Management System" which will emphasize management information requirements on type and status of cases and legal matters, number of cases and resources related to each case; and the various "Operational Case Management Systems" which emphasize more detailed data collection to assist organizations in day-to-day management of cases. Although there are elements of commonalities between the two, the Departmental Case Management System is more concerned with summary level information which is intended to be responsive to requests from Congress and the Office of Management and Budget. For example, various Divisions may be working on the same case simultaneously, the Departmental Case Management System would be able to summarize the resources and status of a particular case at any period in time.

In effect, the departmental case management users' needs have been identified and assessed as reflected in a January 1983 memorandum promulgated by the then Deputy Attorney General Schmults, in which he accepts the report of his Task Group on Automated Legal Support Systems. A copy of the memorandum and the Task Group report has been provided to the Committee. This process has continued to receive attention and scrutiny as reflected in the Department's present Task Group on Technology in Law Enforcement.

The implementation of a Departmental Case Management System will provide:

1. Accurate aggregate information on cases and matters;
2. A summary of resource use for cases and matters;

3. A summary of information regarding the implementation of Departmental priorities;
4. Summary projections of resource requirements (case weighting):
5. Information regarding the stage of case proceedings;
6. Accurate accounting for accounts receivable; and
7. Operational management information.

Your justification also states that "JMD should implement a coordinated systems development effort in the automated legal support systems area" (p. 43). What has Justice done to coordinate this proposed system with the many other case management systems proposed in this budget? Why are other components expanding existing systems or implementing new ones? Please provide a copy of the master plan which details how these systems will be coordinated and intergrated.

In response to the second part of the question above, the various litigating components of the Department are expanding their systems or implementing new ones in an effort to ensure responsiveness to their employees' day-to-day operational needs.

The first part of the question above is partially answered by our response to the Subcommittee's first question. The Justice Management Division (JMD) request for one position and $100,000 to begin implementation of an effective Department-level case management system is based on JMD's need to focus on the requirement for summary-level managerial information; and to address the very issues raised in the Subcommittee's question.

In 1985, JMD is requesting one attorney/advisor position for the Departmental Case Management System. Three additional full-time positions are under consideration for a 1986 request--one computer programmer and two computer systems analysts.

Their anticipated functions would include:

- Evaluation of the technical specifications of the current case management systems in each of the litigating divisions and the EOUSA;
- Design of a Departmental system model which takes into account the current litigating organizations' systems;
- Development of technical specifications for the contractor-designed new system;
- Service as the contracting officer technical representative (COTR) on the contract to develop the system;
- Preparation of programming changes to the contractor-developed software when necessary; and
- Service as the technical liaison between the user community and the Justice Data Center (where the new system will run).

Also under consideration is a 1986 request for contractual services to formulate a systems design that takes into account existing divisional systems. Finally, the contract would involve implementation of the system at the Department level and, where needed, at the division level.

Basic coordination among the litigating organizations is being carried out by the Associate Attorney General's Task Group on Technology in Law Enforcement. The group has determined that the core data elements of the EOUSA's case management system (PROMIS) will be used by the legal divisions in their individual systems, and by JMD in the Departmental Case Management System. Successful design, development, and implementation of a comprehensive case management system will require careful attention to all aspects of the process, including technical factors.

Please itemize and describe the automated systems which comprise the $4.9 million JMD request and the seven other case management systems requesting various funding in the following format.

The JMD Systems which comprise the $5.0 million for JMD Automated Systems are:

- $3,500,000 to begin development of a Departmental Accounting System. The proposed system will be able to adapt to rapidly changing coding structures and will be flexible enough to permit direct but edited input and meet the financial management needs of multiple users and functions.
- $1,400,000 to begin to upgrade and modernize the personnel/payroll systems. This increase would provide for the automation of manual operations, consolidation of the payroll/personnel data base, and on-line inquiry and update capabilities.
- $100,000 to begin development of a uniform departmental case management system.

(In thousands of dollars)

	Case Management Systems							
	JMD	TAX	CRM	CIV	LDN	CRT	ATD	USA
FY 1984 Budget Level								
Hardware cost	...	$114	$255	$317	$300	$23	...	$4,736
Software cost*	...	42	135	645	75	5	...	4,005
Telecomm. cost	...	17	...	...	38	...	$228	...
Staffing costs	...	448	247	849	...	12	284	2,414
FY 1985 Current Level								
Hardware cost	...	170	271	333	320	8	...	6,699
Software cost*	...	46	135	685	80	...	...	1,241
Telecomm. cost	...	18	...	...	40	...	228	20
Staffing costs	...	482	282	859	...	14	133	2,931
FY 1985 Enhancements								
Hardware cost	...	660	134	34	...	31	...	663
Software cost*	...	1,225	226	64	...	2	...	394
Telecomm. cost	...	...	...	...	...	...	...	...
Staffing costs	$100	...	...	...	...	...	...	799

*Includes data entry contracts.

Use of Existing Case Management Systems

In the Department's efforts to develop a workable case management system, what consideration have you given to existing case management technology such as the Judiciary's COURTRAN system?

Development of a Departmental case management system must take into account the existing and planned systems in each of the litigating components of the Department. Many existing and off-the-shelf systems have been considered, including COURTRAN; however, we are moving toward a system which is applicable to the litigative role.

COURTRAN's applicability is for the judicial function, whereas systems such as PROMIS were specifically designed for the prosecutorial and defense functions. (It should be noted that one component, the United States Attorneys, has made a significant investment toward implementing PROMIS in each of its offices.) As the bulk of the Department's caseload is reflected in the United States Attorneys' system, it is most logical and cost effective to follow that lead and develop the Departmental system accordingly.

As justification for funding the case management systems in the seven components, such benefits as increased productivity and reduced backlog are cited. The seven components are Tax, Criminal, Civil, Land and Natural Resources, Civil Rights, and Antitrust Divisions, and the U.S. Attorneys. Please provide data which supports actual and anticipated productivity improvements for the current and proposed automated case management systems. At a minimum, provide the following for FY 1981-1983 actuals and FY 1984-1985 estimates:

- *case load by component,*
- *number of attorneys per component, and*
- *funding for each case management system*

Tax Division	1981 Act.	1982 Act.	1983 Act.	1984 Est.	1985 Est.
Caseload: Pending Oct. 1	15,683	16,212	17,713	19,281	21,081
Received	20,040	22,163	24,922	26,100	27,600
Terminated	19,511	20,662	23,354	24,300	26,300
Attorney WYs	273	238	264	267	346
Case Management System Funding ($000)	$597	$652	$848	$621	$2,601
Criminal Division					
Caseload: Pending Oct. 1	3,697	3,184	3,350	2,950	2,900
Received	3,326	3,612	2,490	2,300	2,450
Terminated	3,839	3,446	2,890	2,350	2,400
Attorney WYs	429	384	375	367	380
Case Management System Funding ($000)	...	...	...	$637	$1,048

Civil Division	1981 Act.	1982 Act.	1983 Act.	1984 Est.	1985 Est.
Caseload: Pending Oct. 1	23,200	26,767	28,604	36,802	45,016
Received	17,836	16,775	25,293	34,018	51,949
Terminated	14,269	14,938	17,095	25,804	29,346
Attorney WYs	328	328	381	393	439
Case Management System Funding ($000)	$943	$956	$1,851	$1,811	$1,975
Land and Natural Resources					
Caseload: Pending Oct. 1	25,794	24,260	22,293	20,178	18,206
Received	6,954	5,011	4,313	4,358	4,577
Terminated	8,488	6,978	6,428	6,330	6,480
Attorney WYs	195	170	185	181	196
Case Management System Funding ($000)	$360	$400	$550	$413	$440
Civil Rights Division					
Caseload: Pending Oct. 1	907	911	889	825	759
Received	134	121	104	120	158
Terminated	130	143	168	186	168
Attorney WYs	167	169	165	175	177
Case Management System Funding ($000)	$13	$15	$20	$40	$55
Antitrust Division					
Caseload: Pending Oct. 1	319	424	569	637	707
Received	743	643	648	690	690
Terminated	638	498	580	620	650
Attorney WYs	393	340	314	296	284
Case Management System Funding ($000)	$738	$756	$706	$512	$361
U.S. Attorneys					
Caseload: Pending Oct. 1	124,566	134,515	147,842	173,387	201,585
Received	104,471	109,849	131,749	144,501	146,806
Terminated	94,522	96,522	106,204	116,303	118,380
Attorney WYs	1,776	1,841	2,045	2,136	2,176
Case Management System Funding ($000)	$2,369	$5,165	$10,378	$11,155	$12,747

ADP and Telecommunications

It does not appear that the total dollars for ADP and telecommunications are summarized in the budget in any way. For example:

- *DEA identifies an "ADP and Telecommunications" program (pp. 60-67) but also includes the NADDIS system under its "Records Management" program (pp. 68-69) and its STRIDE system under "DEA Laboratory Services" (p. 51);*
- *INS identifies a "Data and Communications" program (pp. 34-38) but also includes automated systems under "Information and Records Management", "Inspections", and other categories;*
- *The Tax, Criminal, Civil, and Civil Rights Divisions, and other components, include ADP under "Management and Administration" along with various administrative functions.*

Can you tell us how much the Department's bureaus, offices, boards, and divisions are requesting for FY 1985 for all ADP and telecommunications resources including equipment, software, personnel, processing charges, etc.?

The Congressional budget submission does not include the summary exhibit entitled "U.S. Department of Justice, Information Technology Systems Exhibits for the FY 1985 Budget Request". This document contains the summarized ADP and telecommunications resource requests and is transmitted annually to the House Committee on Appropriations. A copy has been provided to the Senate Appropriations Committee.

In the budget request for Justice's Office of Intelligence Policy and Professional Responsibility, you state, "Constant upgrading of ADP systems ... is one strategy for increasing productivity" (p. 36. What productivity improvements can you provide to support this strategy?

It should be noted that although the Office of Professional Responsibility (OPR) and the Office of Intelligence Policy and Review (OIPR) constitute one decision unit for budgetary purposes, FY 1985 ADP upgrades are intended for OPR only, and not for OIPR. OPR intends to automate a number of the operations essential to the performance of its mission. Data bases which are now kept in manual systems in paper files and on cards will be converted to automated data bases, reducing time required for research by allowing staff attorneys immediate access to information through individual terminals. The automation will permit closer and more intensive tracking of individual case investigations, and will also enable information on past cases to be researched and accessed more quickly. In addition, research for Freedom of Information requests will also be more easily and expeditiously accomplished. The system will also have word processing capabilities, facilitating the production of drafts and finished documents. In the case of OPR, productivity is measured both by quantity of output and by the thoroughness of the investigations and reports produced by the office. The planned ADP improvements will improve productivity in the above areas by reducing research time to allow more extensive investigations to be accomplished with greater speed and volume.

Have you applied a lease versus purchase analysis to plan the implementation of this strategy? If so, please provide the results.

In formulation of the original request for OPR's ADP system, an informal analysis was made on the advisability of purchase or lease of system equipment. It was determined that leasing the equipment would probably be more advantageous to the Government in the long run, due to the rapid technological advances in this area which could make purchased equipment obsolete within a few years. The Department's Justice Management Division has begun a study of the detailed system requirements for OPR. At a later stage in the study, the advisability of leasing versus purchasing will be explored in greater depth. The final recommendation is unknown at this point, but both leasing and purchasing will be explored before acquisition of the system. In addition, the possibility of a lease with option to purchase may also be explored.

Please provide a copy of the Department of Justice's long range ADP and telecommunications plan.

At the present time there is no consolidated Departmental Automated Information Systems (AIS) long-range plan. Such a plan is anticipated by FY 1987. In the interim, the 83-page "Information Technology Systems Exhibits for the 1985 Budget Request" (provided to the committee) serves as a Department-level resource request and acquisition plan.

However, formal AIS plans consisting of both a strategic plan ("business" plan) and a tactical plan ("who, what, when, where and how") have been developed by some of the principal organizational units, including the Federal Prison System, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Immigration and Naturalization Service. Individual AIS plans are subject to Department-level review after approval by the head of the respective organizations. These multi-volume plans can be made available upon request, but are too voluminous for transmission in timely response to these questions.

In FY 1983, the Justice Management Division (JMD) developed an AIS Planning Methodology, which, as its name implies, is a step-by-step procedures manual to assist an organization in formulating its plans to acquire and manage AIS capabilities to support its mission and meet its administrative needs. After testing the AIS planning methodology within the JMD itself, the document was revised and issued in February 1984, to all offices, boards, divisions and bureaus within the Department. A copy of the AIS Planning Methodology has been provided to the Committee. All principal organizational units will develop formal AIS plans by or during FY 1986, and these will then be consolidated within the FY 1986 - 1987 timeframe to represent, together, the Department's long-range AIS plan.

Consolidated Telecommunications Network

The Department of Justice is requesting an appropriation of $6 million for its Working Capital Fund to begin installation of a Justice Telecommunications Network that is intended to consolidate the five largest networks of the Justice Telecommunications System

The Department estimates that this new network will save $36 million over a ten-year period based on estimates that costs of the current telecommunications systems will rise at 10% a year. (The 10% annual increase was applied to network traffic increases, tariff increases, and operating cost increases which include salaries and related expenses.)

Why is the Working Capital Fund being used to implement the proposed network?

The Working Capital Fund (WCF) provides, on a reimbursable basis, centralized administrative support services. These services are financed through user charges established for each activity. One of the activities included in the WCF is the Justice Telecommunications Service which operates and manages the Justice Telecommunications system (JUST). The JUST system, which is one of the separate networks to be consolidated, is included within the WCF because it is used by all elements of the Department except the FBI and therefore represents a centralized service. Since network consolidation will result in the establishment of a single network to be used by the majority of the Department's organizations, it too will represent a centralized support service. Further, the WCF operates on a cost basis, wherein the cost for goods or services are charged to the recipients and the funds received are available without fiscal year limitations to continue operations and to replace capital investment items. Establishment of the National Telecommunications Network within the WCF will allow for the accumulation of depreciation resources to replace equipment as it becomes obsolete without requesting additional appropriations from the Congress.

What is the basis for the 10% tariff increase per year?

The estimated 10% tariff increase was recommended by the Jet Propulsion Laboratory (JPL), California Institute of Technology. Their projection considered inflationary trends for services as well as the probable effects of deregulation and divestiture. The 10% increase was considered by JPL to be a conservative figure. Subsequently, the Department of Justice surveyed industry experts, the General Services Administration (GSA), the Gartner Group, and American Telephone and Telegraph (AT&T). Their predictions were significantly higher (22% annually), but the Department chose to use the more conservative figure for calculating cost avoidance benefits. It should be noted that during the analysis phase of the study, rates for interstate private line facilities were already increasing at a much higher rate (1981, 35% increase; 1981, termination of TELPAK, estimated 60% increase; 1982, 4.2%; 1983, a proposed 35% increase).

What is the basis for the projected 10% annual increases in operating costs (i.e., salaries and related expenses)? What have been the increases over the past 5 years for these items?

The projected 10 percent annual increase in operating costs is a conservative estimate which has been used to project costs for both the current separate networks and the consolidated network. In actuality operating cost increases for the past five years have been far greater due in part to the increases in telecommunications traffic which have occurred during this period. Following is a table which reflects the actual costs and percent of increase experienced in the operation of the JUST system for the years 1979 through 1983. The costs depicted are those for personnel, travel, space, contract services and supplies.

(Dollars in thousands)

Year	Cost	Percent of Increase
1979	$581	...
1980	704	21
1981	765	8
1982	996	30
1983	1,355	36

NOTE: The significant increases reflected in FY 1982 and FY 1983 include one-time installation costs associated with the conversion of antiquated AT&T teletypewriters to modern multi-purpose terminals.

What is the basis for the estimated 10% increase in telecommunications traffic each year? Do historical data support this estimate?

The annual increase in telecommunications traffic was derived from a comprehensive survey of each data communications system serving all organizational elements of the Department and was included in the JPL Study. Statistics were obtained from the Department users, reflecting actual and projected workload between 1982 and 1992. In December 1983, the JPL Study estimates were updated and reflect significantly higher volumes of traffic over the life of the network. Additional information was considered, including the Justice Data Center on-line statistics, which revealed a 60% annual increase over the past three years. Unforeseen increases, principally in the Immigration and Naturalization Service (INS), caused the second year network projections to reach the previous tenth year level. Fortunately, the efficient network design is flexible enough to meet this and future demands at minimal cost.

Does the projected savings include the cost of potential upgrading/replacing equipment for the consolidated network during implementation and during the ten year period (1983-1992) that is used to illustrate anticipated savings?

The projected savings of nearly $40 million represent a "cost-avoidance" since the figure is derived from comparing projected cumulative costs of the current networks to the projected costs for the consolidated network for the period 1983 through 1992. Annual depreciation costs are included from 1985 through 1991 and are sufficient to allow for upgrade/replacement of equipment as necessary. The projection does not assume any additional purchases beyond the initial purchases in 1985-1987.

Consolidated Telecommunications Network

Is the cost of the consolidated network based on leasing or purchasing equipment?

The cost of the consolidated network is based on leasing major network circuits and local PAD access lines to serve the entire network. The requested funds will be used to purchase and install the 225 network concentrators (PADs), 15 nodes, 500 high-speed data modems, and the Network Control facility.

For equipment that will be purchased, what is the estimated cost for maintenance?

The annual maintenance cost, subject to final competitive contract award, is as follows:

FY	Cost (In thousands of dollars)
1986	$577
1987	1,000
1988	1,525
1989	1,605
1990	1,699
1991	1,796
1992	1,899
TOTAL	10,101

Please provide copies of studies that support these figures.

A copy of the JPL study has been provided to the Committee.

The long range goal of the proposed telecommunications network is to reduce costly duplication of telecommunications facilities, minimize exposure to increasing tariffs resulting from the divestiture of AT&T, and to improve operational efficiency.

To what extent will duplication be eliminated in terms of hardware, software, and facilities?

Duplication will be eliminated from several areas. The most significant impact is in the reduction of circuit (mostly private leased lines) mileage. Existing networks have over 250,000 circuit miles. The future network mileage should equal approximately 100,000 circuit miles. A second area of major importance is the reduced need for modems (devices which are necessary to permit digital information to be communicated over analog phone circuits). The current separate network approach, for example, requires support for 1,200 field locations. These locations require the use of 2,400 modems. Due to the efficient design of the network, only 500 modems will be required in the future. Finally, there is an offset in meeting future growth needs. The consolidated network circuits and equipment expansion needs will be significantly reduced as opposed to what would be required for five separate networks. Senior level officials of the Department consider this offset essential if future requirements are to be satisfied on a sound economic basis.

What consideration has been given to the potential problems associated with hardware/software obsolescence during and after implementation of the consolidated network?

The proposed network acquisition will provide state-of-the-art resources throughout the network and will incorporate the national and international transmission standards. This approach brings the broadest possible set of contemporary technological solutions to satisfy network configuration requirements throughout its life, and thus, guarantees a lengthy systems life. In addition to the standards and the technology, major factors combating hardware/software obsolescence during the life of the network are found in the value engineering and technological update clauses within the contract. Such judicious management and technical clauses will permit technological improvements to be implemented in each component part of the network when required. These approaches were tested against the private sector's experience, to date, and compared with their long-range telecommunications strategies. As a consequence of extensive senior level interaction between Departmental officials and private sector management officials with similar nationwide telecommunications needs, the Department adopted this approach. General Motors, Merril Lynch and Chase Manhattan are some of the companies consulted. General Motors, in fact, projects their network strategies will provide corporate-wide telecommunications service (voice and data) for a minimum of ten years. This ten year systems life, which the Department has adopted as its goal, has also been confirmed by independent research firms, such as the International Data Corporation and the Gartner Group, who project the next substantial telecommunications advances will occur in approximately seven years. Thus, the Department expects to install a state-of-the-art system, capable of incorporating technological change and provide for Departmental needs over the next ten years. This approach provides the Department with additional benefits of phasing-in, or exchanging with the next generation telecommunications equipment only after the equipment has been commercially available for a minimum of three years.

As mentioned previously, the projected costs of the consolidated network include depreciation for the equipment to be purchased. Consequently, the Working Capital Fund (WCF) will be in a position to replace obsolete equipment through normal operations of the WCF. The WCF should not require additional capital once the consolidated network has been totally implemented. Software is paid for annually by license expense and updates are included.

Savings from Consolidated Telecommunications Network

What will be the net annual savings in tariffs if the consolidated network is implemented? Has this been used to offset the projected cost of operating the consolidated network over the ten-year period?

We do not have an actual "net annual savings in tariffs" figure. However, the total data communications equipment costs for the consolidated network are estimated to be $42,793,000 versus $72,745,000 for the present system for an average annual savings of $2,995,200 over the ten-year period. By consolidating the present networks, the number of leased primary circuits and individual data phone lines are reduced, thereby, lowering the sensitivity to further tariff increases.

The tariff savings were not used to offset the projected cost of operating the network. Operations costs are listed separately, showing an average annual savings of approximately $931,000. Again, the consolidation will reduce the present redundance in personnel, equipment, and related costs required to operate five major networks.

Other than increased through-put, what other operating efficiencies are anticipated from the proposed network? Will the network improve data sharing? If so, how?

Sound engineering principles and management practices dictate that comtemporary networks provide for operational efficiencies such as:

1. Network Control. Management control will be enhanced through the generation of both operational and management reports, which is not possible in the current environment. These reports will provide a basis for modeling and simulation which will assist in measuring current performance and assessing the impact of future requirements. The control facility will also provide for the dynamic collection of system statistics for engineering purposes and user reports, as well as for interagency reporting. Efficient line allocation and fault isolation will be possible permitting problem analysis and resolution.

2. Interoperability. Inter-Department component communications will be greatly facilitated and the basic principles for National Communications Systems interoperability objectives satisfied.

3. Gateways. Automatic but controlled user access to commercial networks such as domestic and international record carriers will be facilitated.

4. Local Area Networking. The network will support state-of-the-art local area networking, allowing greater computing resources to be distributed locally in a cost-effective manner.

5. Flexibility. Change can be accommodated quickly and at a minimal cost. For example, currently it takes over sixty days to move a private leased line at a cost of several hundred dollars. The proposed network configuration obviates the need to do this on each occasion because of its effective and flexible design and centralized control facility.

6. Potential for Voice Integration. The network design provides the potential for integrating inter-city voice communications. This, although not calculated into current savings, would result in significant future savings.

7. Alternate Traffic Routing. Using a sophisticated design approach, the consolidated network will permit alternate routing in the event of an operational line failure, thus, eliminating the "single-point-of-failure" problem that currently exists within each of the Department's private line systems.

8. Circuit Mileage Reduction. Consolidation, sharing, and efficient network design will reduce the current 250,000 miles of circuit to an estimated 100,000 miles.

The network will facilitate improved data sharing. It is important to note that high levels of protection such as enhanced software protection, implementation of the data encryption standard, and stringent access controls will be present to allow only authorized access to and sharing of Departmental data.

Please provide copies of any studies and/or reports that support answers to the above questions.

A copy of the JPL study has been provided to the Committee.

Implementation of the network consolidation will begin in 1985 and be completed at the end of 1987, assuming the availability of funds. (Ref. WCF pp 5,6.)

At what point will the individual networks be phased out?

The network will be implemented over a three-year period ending in FY 1987. Individual networks will not be fully phased out until that time. A judicious strategy, adopted by the Department, is to phase out those portions of the individual networks that are costing the greatest amount of money. Thus, the initial phases of implementation will phase out segments of these networks based upon geographic locations and sensitivity to tariffs. Long-haul circuitry, for example, from California to the east coast will be phased out first. This will provide, as the distance factor indicates, immediate relief from these significant costs. The next geographic area of concentration will be southern border areas due to the high data communications volume. Finally, as east coast lines are the closest to central Washington, D.C. processing resources, they will be phased out.

Consolidated Telecommunications Network

Please list major milestones for completing segments of the consolidated networks. Itemize total dollar expenditures for personnel and equipment at the completion of each milestone.

The network's major milestones and costs are as follows:

Milestone	Cost (000's)	Date Completed
Contract Award	--	January 1985
Circuit Acquisition	**	February 1985
Phase 1 Installation		September 1985
5 nodes (Washington, DC; Dallas, TX; San Diego, CA; Los Angeles, CA; and Fort Monmouth, NJ)		
50 PADS		
200 high speed modems		

Expenditures at completion of Phase 1:		
Equipment purchase	$4,675	
Engineering and Programming Support	150	
Training, Documentation, Software License	162	
Shipping and Installation	145	
Site Preparation (one-time)	1,025	
TOTAL	6,157	

Milestone	Cost (000's)	Date Completed
Phase 2 Installation		September 1986
5 nodes (Boston, MA; Atlanta, GA; Miami, FL; Denver, CO; and Phoenix, AZ)		
75 PADS		
150 high speed modems		
Expenditures at completion of Phase 2:		
Equipment purchase	$4,125	
Documentation, Software License	147	
Shipping and Installation	52	
Site Preparation (one-time)	1,251	
TOTAL	5,575	
Phase 3 Installation		September 1987
5 nodes (Kansas City, KS; New Orleans, LA; Detroit, MI; Portland, OR; and Pittsburgh, PA)		
100 PADs		
200 high speed modems		
Expenditures at completion of Phase 3:		
Equipment purchase	$5,250	
Documentation, Software License	188	
Shipping and Installation	52	
Site Preparation (one-time)	1,578	
TOTAL	7,068	

**Costs offset by savings

If the required level of funding for the consolidated network were not approved for FY 1986 and/or 1987, what portions of the network would be operational? Which of the stand-alone networks will be required until the consolidated network is fully implemented? Which will be required after implementation of the consolidated network?

If only FY 1985 funding were approved, a five node network would result. That is, there would be an inter-city network present with major concentrations in Washington, DC; Dallas, Texas; Los Angeles, California; San Diego, California; and Fort Monmouth, New Jersey. Fifty local building traffic concentration devices (PADs) would be installed in these cities, and the network control facility would be implemented in Washington, DC. All stand-alone networks would still be required until full implementation (15 nodes, 225 PADs). Portions of their traffic would be transmitted over the five node network, reducing the need for some circuitry; but the separate networks would have to continue to operate in some form. The current circuit mileage associated with the individual networks (250,000) would be reduced by approximately 50,000 miles.

After full implementation certain local service would have to continue, but the vast preponderance of the existing individual network functions would be assumed by the consolidated network.

The budget states that the purchase of the Network Control Facility will require $18,800,000 to complete the consolidated network. That cost is spread over a seven-year period. (Ref. WCF p.6)

What are the total costs of implementing the consolidated network by 1987, the current target date for implementation? Please segregate the costs by fiscal year and by item such as data communications equipment, software, personnel, consultant services, etc.

The Working Capital Fund (WCF) operates on a cost reimbursable basis. The comment "this purchase cost was distributed over a seven-year period" refers to depreciation of the capital outlays over a seven-year period beginning in mid-1985. The actual capital outlays will occur during the three fiscal years 1985 to 1987. These outlays are itemized in response to a question on the previous page.

The original submission itemizes the costs for 1985-1987 in three broad categories as follows: (In thousands of dollars)

	1985	1986	1987
DCE Costs	$4,596	$4,761	$4,615
Operations	605	666	732
One-time charges	248	272	300
	5,449	5,699	5,647

DCE costs include line leases, depreciation and maintenance of equipment, and software license renewals.

Operations costs include personnel, travel, training and other expenses.

One-time charges include contractual services for physically relocating various PADs, modems and related re-wiring due to relocations of Department of Justice organizations.

According to the budget, annual operating costs, once the consolidated network is in place, are expected to be half of that currently experienced.

In comparing the estimated operating costs, was an inflation factor applied to both current telecommunications systems costs and the proposed consolidated systems costs?

Projections for operating costs do include an inflation factor of 10% per year, applied to both current telecommunications systems costs and the proposed consolidated systems costs.

According to the budget request, the consolidated telecommunications network will require conversion of terminals which use rigid communications software to commonly supported terminal protocol. This has been done for the JUST network. (Ref. WCF p.5.) There is also *reference in the budget to terminals for specific systems; e.g., JURIS terminals (Ref. Criminal Division p.5), DATS terminals (Ref. DEA p.64) and SENTRY terminals (Ref. Federal Prison System, p.95).*

Will the consolidated network require any new terminals that will replace existing ones? If so, how many and what will be the total cost? Please include all costs associated with installation and maintenance.

The consolidated network will support a large majority of the existing terminal base. Action is underway to replace or modify the remaining non-compatible terminals. There will be no additional network costs associated with these efforts. For over a year, guidance has been provided to user elements on terminal replacements/additions to ensure compatibility with the planned network. Examples of the existing installed bases are as follows:

1. JURIS Terminals. The current base is compatible with the network. Normal replacement planned.

2. SENTRY. The current base is compatible with the network. Compatible replacement with enhanced capability being requested by the Federal Prison System.

3. DATS. The currently non-compatible terminals are being phased out.

4. INS Acquisition II. A contract will be awarded shortly for, among other hardware and software resources, replacement terminals and other enhanced terminal configurations.

5. JUST Terminals. The current Justice Network (JUST) will modify or replace existing terminals within current funding levels. The current terminal base is not compatible with the consolidated network.

6. Communicating Word Processors. The Department has an expanding base of word processing units capable of communications. These recently acquired, due to previous guidance, are compatible with the consolidated network. Modifications to existing non-compatible units are not contemplated as the remaining useful life of these devices is short.

Will modifying existing terminals for use with the consolidated network present any problems in terms of compatability? Please describe.

No, all compatibility issues have been addressed and no problems are anticipated. Users have been instructed, as periodic procurements and future plans are reviewed by the Department, to acquire equipment that is compatible with the consolidated network.

What is the projected cost of modifying existing terminals?

The only terminals not already compatible with the consolidated network are those associated with the Justice Network (JUST). These terminals will be converted/replaced at a cost equal to or less than the current cost. Therefore, no additional funding will be required.

There are a number of references in the budget to required increases in the Working Capital Fund to support JURIS. For example, the U.S. Attorneys and Marshals request $650,000 (ref. p. 14), General Legal Activities require $681,000 (ref. p. 12) and the Antitrust Division seeks $84,000 (ref. p. 34).

Why are these increases needed?

The increases requested by the U.S. Attorneys and Marshals, the General Legal Activities and the Antitrust Division are for centralized JURIS, litigation support and case management services which are available to all Departmental organizations through the Working Capital Fund. Increases of the magnitude requested are necessary because although the costs of providing these services have steadily increased over the past several years, no uncontrollable increases have been requested by user organizations since the establishment of these services in 1978.

Will the increases fund, at least in part, the consolidated telecommunications network? Will they offset any portion of the $6 million request to begin implementing that network?

The increases requested by the user organizations are to reimburse the WCF for operating expenses incurred by the WCF to provide JURIS, litigation support and case management services. As reflected in the Annual Cost Comparison of the Current and Proposed Network Configuration, the aggregate cost of providing these services currently includes $301,000 in telecommunications line costs to support the JURIS network. Under the proposed network configuration JURIS telecommunications costs would be increased by $95,000. To this small extent, the increase for JURIS would offset operations costs associated with the consolidated network. However none of the $6,000,000 requested for capital equipment purchases to begin implementation of the network will be used to fund network operations costs. Neither will any of the increases for JURIS, litigation support and case management services be used for capital purchases associated with network implementation.

The budget suggests that there are upgrades and/or enhancements planned for some of the current, stand-alone communications networks.

What upgrades and/or enhancements to the current telecommunications networks are planned between 1984 and the end of 1987? Please describe them, their purpose, and their total estimated cost.

Federal Bureau of Investigation

Computer Applications Communications Network (CACN). The CACN, which presently includes commercial point-to-point and multi-channel circuits, provides all the communications services between FBIHQ, the Northeast Regional Computer Support Center, and field locations.

CACN presently supports the Intelligence Information System (IIS), Organized Crime Information System (OCIS), Investigative Support Information System (ISIS), Field Office Information Management System (FOIMS), and Resource Management System (RMS). The FBI plans to develop CACN using regional data communications system, based on the IBM Systems Network Architecture (SNA). It will provide the capability for a single terminal user to select a specific function or database independent of its physical location and the system. These systems support National Security Level Information. By the end of FY 1987, CACN will be operational in the Northeast Region, Western Region and Mid-Atlantic Region.

The Secure Automated Message (SAM) Network. The Secure Teletype System (STS) presently consists of teletype machines, cryptographic devices, and Federal Telecommunications System (FTS) resources of FBIHQ and field locations. A temporary point-to-point circuit is established between terminals by dialing the FTS number of the FBI location receiving each teletype. The system supporting the FBI Legal Attache Offices consists of teletype machines, cryptographic devices, and the Department of State communications system.

In 1983, the FBI selected the Defense Data Network architecture, which will significantly speed the transmission of teletypes and, ultimately, reduce the resources required by this labor-intensive operation. Subscriber services will be obtained through the Defense Communications Agency. This service will provide links to and from the network. The FBI plans to have the SAM Network fully operational in 1985.

Drug Enforcement Administration

DEA Automated Teleprocessing System (DATS) Network. The DATS network is a nationwide multi-station system which provides on-line access to the DATS application systems that are processed on the Justice Data Center's (JDC) Amdahls computer system. Users of the DATS network include DEA domestic field offices, forensic laboratories, Headquarters, and some special sites such as airports and border crossings. The DATS network has 31 dedicated circuits which provide access to the JDC system; four of the lines operate at 4800 baud and 27 operate at 2400 baud. The DATS network has 96 cluster controllers and 18 dial-up ports (expandable up to a maximum of 32 dial-up ports). There is also a dedicated line which provides access to the NADDIS file on the JDC system through the PATHFINDER system (described below) at DEA headquarters; this line operates at 1200 baud.

In addition to the domestic DATS network, DEA is currently implementing an "Overseas DATS" system. The Overseas DATS network will use facilities provided by the Department of State to connect terminals at selected foreign offices to the DATS application systems processed on the JDC computer system. The overseas terminals will use 9600 baud lines through a multiplexor. The State Department headquarters will be connected to DEA via forty-eight 12 baud channels multiplexed on a single 56000 baud line.

During FY 1984, DEA contracted for the interim one-for-one replacement of the DATS equipment. Installation of the new equipment is currently taking place. Although this replacement hardware will neither provide any added processing capability nor address the DEA security requirements, it will ensure an interim stable data communications environment by providing new, maintainable equipment enabling DEA to change its current telecommunications protocol to the standard SNA protocol. In FY 1986, the FBI will begin providing secured telecommunications support to the DEA for its processing needs. The DEA and the FBI are developing a transition plan for this effort.

Secure Teletypewriter System (STS). DEA maintains a secure teletypewriter network for message transmission between DEA field offices and DEA Headquarters. The DEA Secure Domestic Teletypewriter System presently consists of a Headquarters Telecommunications Center and 106 terminals in field offices.

The DEA teletypewriter network uses circuit switching, which allows any stations in the network to send a message to all other stations in the network with only one transmission. The network uses KW-7 cryptographic equipment which is equipped with KOI-16 card readers.

The long-range objective for the DEA Security Domestic Teletypewriter System is to support 130 operational terminals. The network is a private system within DEA; however, communications with other government agencies are available through the Headquarters Telecommunications Center. DEA foreign offices that are accessible through the domestic system are Honolulu and San Juan. Access to foreign offices is provided through the Department of Defense Automatic Digital Network and/or the State Department Diplomatic Telecommunications System, both of which are connected to the Headquarters Telecommunications Center. DEA is engaged in a continuing dialogue with the Department of State concerning secure telecommunications for selected DEA offices overseas.

Plans and resources to redesign STS to meet TEMPEST requirements are under review. A secure teletypewriter communications upgrade program has been implemented by the procurement of 169 KG-84 encryption devices to replace the KW-7's. These new devices are scheduled for delivery in 1985. The procurement of an additional 100KG-84's is planned.

Immigration and Naturalization Service

Interim Network Communications (INSINC) Enhancements. The INS received an enhancement of $536,000 for expansion of INSINC to 45 additional field offices in FY 1984 (for a total of approximately 101 sites). In addition, INSINC is being expanded to include access to other INS systems and to the National Law Enforcement and Telecommunications System (NLETS) and the National Crime Information Center (NCIC).

The Service has agreed to begin phasing out INSINC in FY 1985 as the Justice Telecommunications Network (JTN) becomes operational. It is anticipated that the request for procurement for the JTN will be released soon. Implementation is scheduled to begin in FY 1985 and continue through FY 1987. The planned INS enhancements cannot be eliminated without affecting the organization's mission. Therefore, the Service must plan to use INSINC to satisfy its increasing data communictions requirements as the JTN is phased in. Plans are under consideration to expand INSINC to interface with the systems being developed under acquisition phase II in FY 1986. Plans are that INS will be phased into the JTN as network capability is available. Funds for the INSINC would be transferred into JTN as network is available.

Can these planned changes be eliminated without materially affecting operation of the system?

In each of the above cases the expansions/enhancements are critical to mission support activities. In each case they are part of long-range plans and cannot be eliminated without materially impacting operation of the system.

Functional Requirements for the Consolidated Telecommunications Network

The proposed telecommunications network seeks to consolidate DOJ's five major stand-alone networks which represent about 90% of the equipment inventory and costs of its 20 networks. (Ref. WCF p.4)

Are there any plans for the consolidation of the remaining networks? If so, please describe.

The Justice Telecommunications Network (JTN) strategy is directed toward consolidating major networks of the Department. The remaining networks will be merged with the JTN as resources become available. This is possible because of the extensive geographic coverage of the fully implemented network.

The budget refers to a comprehensive Department-wide data communications study that was undertaken to determine to what extent the separate networks could be merged into a common communications network. (Ref. WCF p.5). Projected workload requirements used in that study were certified by the Department's users as being accurate and complete.

To what extent were users involved in determining the functional requirements of the consolidated network?

Senior telecommunications personnel from affected Department activities were formed into a working party for needs assessment purposes. Representatives from the Drug Enforcement Administration, the Bureau of Prisons, Immigration and Naturalization Service, the United States Marshals Service, the Executive Office of United States Attorneys, the Justice Management Division, and representatives from the Department's legal divisions participated. These representatives submitted and certified their network workload requirements during the early stages of the project. Subsequently, a senior management Justice Telecommunications Network (JTN) user group was formed in July 1983, which completed a network requirements update in March 1984. This user group is participating in the network acquisition, and they will serve as the review board for the operation of the network.

Have the functional requirements been updated since 1981? Will they be updated during implementation of the network? If so, how frequently?

Yes, the functional requirements have been updated. The workload statistics and related functional requirements were updated in March 1984, and reflected in the final specification document produced in April 1984.

Within the network control facility environment, network statistics will be extracted and used in a dynamic and ongoing fashion to update network requirements.

Please provide a copy of the Department-wide study and the network alternative analysis prepared by the Jet Propulsion Laboratory.

This information has been provided to the Committee.

Drug Enforcement Administration

DAWN

The base program description for Diversion Control mentions the use of the Drug Abuse Warning Network (DAWN) to provide hospital emergency room and medical examiner data on drug abuse episodes. (See pages 28 and 29.) In 1979, GAO issued a report (GGD-79-88) which pointed to numerous problems with the accuracy and reliability of DAWN and recommended that DEA take several corrective actions. Also, the report cited the cost to operate DAWN for May 1979 through April 1980 was about $1.8 million.

Have the GAO recommendations been fully implemented? Please provide specific details.

What is the current status of DAWN in terms of data realibility/ accuracy? When was the last data reliability study made? Please provide supporting documents.

What has been the annual contract cost for the period 1980-1984?

Is the contract renewed on a competitive basis?

Although partial funding for DAWN was in the DEA appropriation, in 1982 it was transferred to NIDA. DEA uses data from DAWN.

PATHFINDER

Development of the PATHFINDER system began in 1984 with scheduled completion in FY 1981. Your FY 1985 justification requests an increase in funding to expand PATHFINDER (pp. 65-66) because the system is "saturated" (p. 65) and cannot handle the workload. Furthermore, PATHFINDER was originally described as an ultra-secure intelligence system. The required high-security level was a justification for a large part of the system's original cost, including the stand-alone computer system. However, you now plan to integrate PATHFINDER with other information systems and run it on the Department of Justice computer center (p. 65).

How will the security of data in PATHFINDER be assured once the system begins running on the DOJ computer center?

Because of the lack of security devices, the PATHFINDER system was never protected at the level originally envisioned. PATHFINDER and NADDIS are now protected to the same level through Data Encryption Standards (DES). Any integration will be between systems of the same level.

What elements of the system have become saturated, e.g., memory, storage, etc.?

The PATHFINDER hardware has reached its limitation (saturation) in the areas of mass storage, CPU processing power and the physical availability of communication ports. Further, the PATHFINDER system is now running a modified operating system (UNIX Level 6) which is now three releases behind the current industrial standard release (UNIX System V). Not being on a standard industrial release is extremely limiting, since any changes to the operating system require the issuance of a sole-source contract.

What has been the average number of inquiries handled by the system over the last three years?

Since PATHFINDER was wholly replaced in 1981 those statistics are not camparable to the present. While PATHFINDER was expanding in 1982 the transaction volume was approximately 400,000. The number of PATHFINDER transactions for 1983, was 800,000.

How often is the data base purged of outdated information?

The major PATHFINDER files are updated weekly and outdated information is purged. All other PATHFINDER files are updated daily or as needed by the PATHFINDER users.

PATHFINDER and NADDIS

From a brief description of PATHFINDER and of NADDIS (p. 61), the two systems appear to include much of the same data. What is the difference between the two systems?

Although NADDIS and PATHFINDER contain similar data elements, they do so for different reasons. PATHFINDER information is a subset of NADDIS with added information. NADDIS contains information needed to manage investigative files. PATHFINDER more importantly is a data base management system (DBMS) with many functions NADDIS does not have.

How much of DEA's FY 1985 budget request is for the operation and expansion of PATHFINDER and for NADDIS?

In the FY 1985 budget submission DEA asked for $600,000 and four positions to convert the PATHFINDER System to process on the Department of Justice (DOJ) central computer facility running under the Data Base Management System Model 204. In addition, $200,000 and one position was requested to convert the Asset Removal System (that processes on the PATHFINDER system hardware) to the DOJ computers under DBMS Model 204. All of these resources are required to convert and exploit the existing PATHFINDER capability. While none of these resources are directly aimed at expansion, the conversion itself will result in the capability to meet further expanded demands.

No additional funds were requested for the expansion of NADDIS in FY 1985. The projected cost for the operation of NADDIS in FY 1985 is $5,275,000, which includes compensation and space. No cost is included for personnel outside of the Office of Information Systems, except for Data Analysis and Entry contract personnel of approximately $2,000,000. The projected FY 1985 operating cost for PATHFINDER is $2,409,000, which included the cost of the El Paso Intelligence Center (EPIC) ADP systems.

Has a cost comparison been done to determine if it would be more economical to consolidate the two systems rather than operate the two separately?

Current plans are to consolidate both systems under a single hardware system and DBMS. This decision was based not only on cost but overall ADP strategy.

Please provide a copy of:

- *the DEACASS study of DEA's information needs (p. 64), and*
- *DEA's long-range ADP plan (p. 64).*

Copies of these materials have been provided to the committee.

Trends in System Costs

Please provide the following cost breakout for the major DEA systems previously listed.

Please provide for the same systems and time period indicators that are reflective of each system's workload and any productivity measurements that indicate system effectiveness.

DEA Systems

FY 1981	*PATHFINDER	STRIDE	NADDIS	CSA	ARCOS/ DADS
Hardware	250	20	659	60	6
Software cost	90	0	0	0	0
Telecomm. cost	50	20	587	15	0
**Staff positions	36	7	26	9	7
FY 1982					
Hardware cost	265	23	779	127	7
Software cost	0	0	200	0	0
Telecomm. cost	80	24	643	20	0
**Staff positions	22	9	30	14	8
FY 1983					
Hardware cost	438	42	517	151	37
Software cost	9	500	137	350	0
Telecomm. cost	100	30	630	27	0
**Staff positions	18	5	21	20	16

FY 1984 est.	*PATHFINDER	STRIDE	NADDIS	CSA	ARCOS/ DADS
Hardware cost	684	78	680	276	76
Software cost	1024	50	53	134	76
Telecomm. cost	300	36	601	33	0
**Staff positions	24	7	25	21	15
FY 1985 Budget Request					
Hardware cost	582	46	514	136	597
Software cost	950	0	400	0	815
Telecomm. cost	435	40	800	50	100
**Staff positions	25	7	26	21	17

* Includes cost of the El Paso Intelligence Center.

** Includes allocation of the Office of Information Systems overhead.

DEA Workload Analysis
(in Thousands)

System	1981	1982	1983	1984*
PATHFINDER Intelligence Support System (PF II)				
Number of transactions	**	**	168.6	228.2
Number of file records	**	**	44.0	49.8
Avg. query response (seconds)	**	**	6.33	7.10
System to Retrieve Information from Drug Evidence (STRIDE)				
Number of transactions	417.5	416.2	416.4	102.3
Narcotics and Dangerous Drugs Information System (NADDIS)				
File transactions	10,243.3	10,160.2	10,434.6	2,829.5
New file subjects	469.1	513.3	571.9	152.6
Avg. query response (Seconds)	38.1	32.5	7.3	7.1
Controlled Substance Act (CSA)				
File transactions	...	...	552.6	139.2
Number of registrants	646.2	663.6	685.2	696.0
Registrants retired	37.0	35.7	30.5	12.9
Automated Reports of Consummated Orders System (ARCOS)				
Transactions backlogged (peaks)	504.2	60.7	105.3	75.7
Transactions processed (in thousands)	18.007.1	16,022.9	16,451.6	5,593.5

*Thru April 30, 1984
**Prior to PF II

Federal Bureau of Investigation

In its FY 1985 budget submission, FBI requested that ADP and telecommunications be appropriated approximately $133 million to support operations, maintenance, and development projects. This request represents a net increase of almost $33 million over FY 1984 for this line item. FBI's requests for additional support staff for their Field Offices Information Management System project is identified as the primary cause for the increase.

In the FY 1985 budget justification, the Bureau stated that it had updated its long range automated plan to reflect changes in required resources and automation strategies. Please explain the changes FBI has made to its automation strategies and why such changes were necessary.

The change in the FBI's automation strategy is a result of the accelerated implementation of the Field Office Information Management System (FOIMS).

Under the original FOIMS plan, all FBI Field Divisions would have received full FOIMS support by FY 1987. However, budget restrictions have resulted in a cumulative delay of three years. The accelerated plan will bring limited FOIMS capabilities to all FBI Field Divisions by December 1985 and will allow the FBI to accrue some benefits beginning in FY 1986 rather than waiting for full implementation and benefits in FY 1990.

There are several advantages to this change in implementation strategy. The most significant of which will be the elimination of redundancy in indexing. With all field divisions and Headquarters online to a distributed index, the FBI will be able to streamline mail processing procedures through the implementation of a new file number scheme. FBI management will have more timely information available in case management, time and attendance, and time use recordkeeping data. Also, the standard terminal provided to the field divisions is a microcomputer that will allow local data processing.

The GAO report issued in October 1983 cited the need for centralized coordination to standardize data elements to ensure compatability among automated systems. What action has FBI taken to improve coordination among project managers and to standardize data elements?

The following actions have been taken by the FBI to improve coordination among project managers and to standardize data elements:

- Filled the Data Administrator position with a qualified computer scientist and transferred the position to the Assistant Director, TSD, to afford Data Administration (DA) the highest level of management support in its strategic activities.

- The Data Administrator developed a Charter for the Data Administration program in January 1984. The Charter was approved by the Assistant Director, Technical Services Division, in May 1984. The charter provides the necessary authority for the DA program and defines the scope, goals, objectives, roles, responsibilities, organizational interfaces, methodologies and skills required to perform Data Administration in the FBI. The Charter also sets up vehicles for centralizing coordination of the automated systems.

As referenced in the DA charter, one mechanism for centralized coordination among the automated systems is a Data Base Design Review Board (DBDRB) whose members are:

- Program Manager for Data Administration, chairing study phase reviews;
- Program Manager for Data Base Administration (DBA), chairing later design phase reviews;
- System Programmer in charge of DBMS installation and currency;
- Chief Data Base Analyst from each project team with applications using the Data Base/Management System or otherwise affected;
- Project Manager for Software Methodology;
- ADP/T Security Officer; and
- Information System Auditor.

The DBDRB has been in operation since 1982; however, Data Administration recently promulgated additional procedures and standards to require reviews at the conclusion of the study and the design phases in each system's life cycle, and to specify the material to be reviewed. Reviews cover consideration of data, performance, security/privacy, and audit requirements. The standards and procedures for the DBDRB will be included in a Data Resources Management manual which will serve as a centralized reference for the project managers to all DA and DBA policies, standards and procedures.

- The Data Administrator chaired an ad hoc Data Access Policy Committee. The Committee formulated a general data access policy which identifies the User Division sponsor of each automated system. Sponsorship entails responsibility and accountability for implementing access policy and compliance procedures specific to the sponsor's data bases. Formalization of this policy was especially needed because of the FBI's imminent deployment of standard intelligent terminals. The policy was approved by each of the User Divisions in March 1984.
- TSD acquired PREDICT, the Data Dictionary System which is integrated with the ADABAS Data Base Management System. The FBI Data Dictionary, a directory to and dictionary of FBI information resources, including data, will be implemented using PREDICT. The Data Dictionary is another device for ensuring coordination and standardization of data elements, by serving as a centralized reference for users and technologists in the design, development and operation of FBI information systems. PREDICT was installed in test mode in January 1984. The Data Administrator and the Data Base Administrator are currently planning for the conversion of ADABAS applications to PREDICT. The Data Administrator is also

drafting a methodology for standardizing data elements which is modeled after the American National Standard Institute's standardization process using the canvass method and planning for the implementation of data element standards using PREDICT.

What guidance has the Bureau received from the Department of Justice to assist the Bureau in implementing IRM information concepts as embodied in the Paperwork Reduction Act of 1980?

The Department of Justice provided IRM policy, procedures, and guidance to the Bureau. FBI tactical systems plans are submitted to the Department for review. In addition, all automated system acquisition requirements are submitted to the Department annually.

What is the Bureau doing or planning to do to implement IRM concepts? Has the Bureau established a single point of contact for implementing IRM concepts?

Primarily, Technical Services Division (TSD) implements IRM concepts through its management system. Established in 1978, the system provides a rigorous management process to support direction, control, and decision-making related to information projects, user requirements, and resources for which TSD is responsible. The Assistant Director, TSD, is involved in intensive management review of all information activities including planning, budgeting, organizing, directing, training, controlling, and acquiring information resources. The process illuminates project cost and progress and ensures that management of TSD's human, fiscal, and machine resources is carried out in an efficient, effective, and economical manner.

In its FY 1985 budget request, FBI reported that it had increased its headquarters computer capacity by threefold. At the same time, FBI's FOIMS project is moving FBI more towards a regional organization approach through decentralized distributed processing capability. Please explain the basic strategy for the two directions.

In the FBI's long-range automation strategy, the Headquarters (HQ) center is viewed as a seventh regional computer support center. This center will service FBIHQ automation requirements, the criminal justice community needs, and some investigative needs of the field. These areas are not addressed by the FOIMS project. The HQ center will be connected to the other regional centers via the same secure network.

DEA and FBI are receiving money to support the development and enhancement of their automated information systems. Since these two organizations have been administratively linked together, what efforts have been made to reduce duplicative systems in the administrative and investigative areas? How will this help to reduce overall ADP costs and improve efficiency with FBI and DEA?

Early in 1984, the Department endorsed a course of action which would lead to relocation of most DEA information systems to the FBI's facility. This decision is intended to ensure that DEA and FBI will operate within a compatible processing environment and that DEA will not require the investment of several million additional dollars for a separate secure facility to process National Security Information.

The technical staffs of DEA and FBI have been meeting on a regular basis and exchanging detailed information on their operations and the systems design of both agencies. Efforts have been made by both groups to avoid duplication of systems and operational support and also to select common architectures for new systems development.

During various reviews relating to the establishment of a closer working relationship between DEA and the FBI, an option of administratively linking the two agencies was considered and rejected. Even had the option been accepted, the integration of systems would be a costly and long-term process. However, to improve the effectiveness of both organizations, procedures have been put into place to share pertinent information. The FBI is a participant at EPIC; a NADDIS terminal has been installed at FBI Headquarters, and DEA's laboratory system was modified to accept FBI drug exhibit data.

Joint planning efforts are continuing, with a particular focus by Department management on minimizing duplicative efforts in the area of administrative systems. This is consistent with the Administration's strong interest in improving the overall effectiveness and efficiency of necessary information systems.

FBI received $40 million as part of its FY 1984 budget request to acquire AIDS-III. What is the status of the AIDS-III procurement and when is AIDS-III scheduled to be operational?

The FBI requested $40 million as part of its FY 1984 budget request to procure the Automated Identification Division System - Phase III (AIDS-III). However, the contract for AIDS-III is a large and exceedingly complex procurement action which the FBI is making every effort to award correctly and expeditiously. As a result, the contract award date will be delayed until FY 1985, when the full $40 million may be available.

The initial draft of the functional specifications needed for the competitive procurement of AIDS-III was completed in December 1983. At the request of prospective bidders, the functional specifications portion of the Request for Proposals (RFP) for this procurement were "prereleased" on March 5, 1984. This was done so that the bidders could familiarize themselves with this large and complex project before formal release of the RFP now anticipated on June 8, 1984. The contract may be awarded in early FY 1985. It is anticipated that AIDS-III will be operational in the first quarter of calendar year 1988.

FBI reports that it had 2,685 positions in the identification area for FY 1984. The FY 1985 budget request shows 102 positions being decreased (or 3.7 percent decrease). What is the long range projection of staff reductions for the identification area? How will these staff reductions be accomplished (i.e., RIF, attrition, or lateral transfers, etc.)?

Based on its extensive feasibility study completed in 1981, the Jet Propulsion Laboratory estimated personnel savings of between 900 and 1,000 employees through automating the work functions of the FBI's Identification Division (ID). At the time of this estimate, the ID had an authorized complement of 3,400 support employees. Therefore, the long-range projection of staffing needs for the Division is 2,400 to 2,500 employees. While some personnel savings have already been realized, the full extent of the projected savings will not be achieved until after ADIS-III becomes fully operational in early calendar year 1988. The staff reduction will be accomplished through attrition.

FBI is requesting $1.2 million for the fingerprint automation project. Why does FBI need $500,000 for consultants to monitor the AIDS III contract? Specifically, what will be the responsibility of these consultants?

The building of AIDS-III is a complex, multiyear project; therefore, to ensure proper contract performance, extensive technical oversight will be required of the work of the prime and subcontractors. The magnitude of the contractual effort necessitates the services of an outside consulting firm to augment the FBI's technical staff in evaluating, monitoring, and controlling the progress of the project.

FBI is requesting $735,000 to continue research and development of an Automated Classification System (ACS). Please explain how ACS relates to the AIDS-III project and why the research and development of ACS was not a part of the AIDS-III developmental project?

Research and development of the Automated Classification System (ACS) was last funded in FY 1980. Funds were not available to continue this work in FYs 1981 through 1983, but funds were included in the FY 1984 appropriation to restart the work. This is a multiphased effort requiring an estimated eight years to complete the research effort and develop new fingerprint reader equipment which will include the ACS. The original AIDS-III development plan included ACS, but both the lack of funds and the urgent need to install advanced technological systems required action to have AIDS-III on-line by 1988. Therefore, ACS will be added to AIDS-III after the ACS fingerprint readers are developed.

Reportedly, the NEC Information System Inc. of Boxborough, Massachusetts has a fingerprint system that can search through 640 fingerprints a second and search a file of three million records in an hour. How will the operational characteristics of the AIDS-III system compare to the NEC system? What other fingerprint identification systems are available and what advantages are being achieved by the Bureau by development a new system?

The NEC system, as well as most of the other commercially available automated fingerprint systems, is based on technology which was originally developed under FBI auspices. The NEC system is a "barebones" system which can store and search inked and latent fingerprints. It does not have the capability to conduct name searches or store and retrieve criminal history records. Two other fingerprint identification systems are currently available. They are the De La Rue Printrak, Inc., system and the new French "Morhpo" system. However, like the NEC system, neither system has all the processing capabilities required by the FBI.

FBI states that an objective of AIDS-III is to provide one-day turnaround for the processing of fingerprint identifications. Does this *objective apply to the processing of both criminal and civilian fingerprint identifications? When is FBI projecting that the one-day turn around processing time will be achieved?*

The objective of providing a one-day turnaround in AIDS-III will apply to both criminal and civil fingerprint card submissions. This objective should be achieved during the first quarter of calendar year 1988, when AIDS-III becomes operational.

NCIC

In the FY 1985 budget, FBI is requesting $2 million for upgarding the design of the NCIC system. What improvements will be made to NCIC system through the redesign effort?

Improvements made to the NCIC system through the redesign effort will be made in several areas. Using state-of-the-art technology, the new NCIC system will include features to improve and maintain accuracy and completeness of data in the NCIC database. Quality assurance criteria with defined standards will be implemented. The system will be flexible in responding to changes in the processing or data environment. It will be able to handle very high-volume transaction processing. System integrity and futurity of the system design will be assured based on thorough analysis of functional requirements and environmental analysis and evaluation. This analysis includes emerging methodologies and technologies, security, data security, privacy, legal compliance and internal controls. The system will employ a distributed processing back-up strategy. Data, as well as redundant hardware and software, will be distributed over two or more sites to reduce the consequences of a disaster, to reduce response time, and to improve reliability and productivity.

The system will also allow for auditability with two prime objectives. First, internal controls will be designed into the system ensuring processing of transactions is a complete and accurate as possible. Second, an audit trail will satisfy management's needs and enable an independent auditor to perform an effective audit.

All improvements to the NCIC system as a result of the redesign will enable the NCIC system to meet the current and future information needs of the criminal justice community throughout the remainder of this century.

FBI reported that no new federal offenders records are being established in the Computerized Criminal History (CCH) file, rather, these files are being entered into AIDS and indexed to the Interstate Identification Index System. Does the Bureau plan to convert files already in CCH to AIDS? What resources would be required to do a full conversion?

The FBI plans to convert files already in CCH to AIDS when the necessary resources are available. As of April 1, 1984, 648,023 CCH records are not currently recorded in AIDS. It is estimated that it would take 186 man-years to pull and review documentation and to code and enter the records into the computer. At the present time, however, these resources are not available.

FOIMS

What is the Bureau's total projected cost to fully implement the Field Offices Information Management System and once fully implemented, what will be the annual operational cost for this system? Please identify the estimated resources FOIMS will require to be fully operational in terms of staffing and hardware.

The total projected cost of the FOIMS from conception to its completion in FY 1990 is $386.3 million. When fully implemented, the annual operating cost of FOIMS for FY 1991 and subsequent years is projected at $49.2 million per year.

The operational staffing level for each regional computer center is 64 support and three special agent workyears. There will be a total of six regional computer centers; therefore, from 1986 to FOIMS completion in 1990, an additional 318 workyears will be requested to support the operation of FOIMS.

Will the increases in staffing, as a result of FOIMS, be offset by staff reductions either in the field or at headquarters once FOIMS is fully operational?

Under full FOIMS implementation, additional workyears will be avoided rather than a staff reduction realized. The current estimated value of avoided workyears under full FOIMS implementation is $48.4 million (2,420 workyears).

FBI has requested 40 staff support positions to staff the Western Regional Computer Support Center. Does this represent the total staffing requirments for this center? If not, what additional staff will be needed?

The FY 1985 budget request includes 42 additional workyears for the Western Regional Center. In 1986, the FBI estimates a need for an increase of 24 support workyears and one special agent workyear for the Western Regional Computer Support Center. The projected operational staff for each regional center is 64 support and three special agent workyears.

A GAO report issued in October 1983 recommended that the Bureau make an independent quality assurance review of FOIMS software. What action has been taken on this recommendation?

The Technical Services Division (TSD) Quality Assurance (QA) project manager has briefed the FOIMS team on QA procedures and standards. He has also incorporated the FOIMS project into his review schedule which includes all developmental automation projects in the TSD.

FBI awarded a contract for 6,214 tempest-tested intelligent terminals and 3,401 printers. Specifically, will these systems be dedicated to *a specific Bureau system or will other Bureau systems be accessible from these terminals? What will be the distribution of this equipment between field office, computer support centers, and headquarters?*

The FBI Long Range Automation Strategy calls for the integration of all investigative and administrative systems. The 6,214 intelligent terminals and 3,401 printers will technically have access to any data in these systems since they are being designed and implemented using common hardware and software architectures. Limitations will be imposed on access by FBI personnel on a need-to-know basis to ensure security and privacy. Current implementation plans indicate that approximately 900 of these terminals and 450 printers will be located at FBI Headquarters with the rest being distributed throughout the FBI's 59 field offices and 400 plus resident agencies. Only very limited numbers would be located at computer support centers. This number could increase, however, if it becomes cost effective to move data entry/word processing support from a field office location to a computer support center. Likewise, the ratio of Headquarters and field devices may change as enhancements to systems and data distribution indicate more cost effective or operationally effective locations of some devices.

QUESTIONS SUBMITTED BY SENATOR RUDMAN

White-Collar Crime Reduction

The budget justifications for the FBI show that the white-collar crime program, alone among the enforcement programs, is being reduced. An article in the February 1, 1984 Wall Street Journal indicates this is because the FBI's resources devoted to drug enforcement have increased more rapidly than the FBI's total resources. What effects have and will the cuts have on white-collar crime enforcement? Is it true, as The Wall Street Journal article stated, that the thresholds before which the FBI will investigate white-collar crime are increasing?

The FBI's resources devoted to drug investigations have indeed increased more rapidly than the FBI's total resources. While being funded for 334 positions during FY 1983, we actually utilized over 800 agents in the investigation of major narcotics investigations. We were simply doing additional work with no additional resources. It became necessary to redirect agents from other investigative programs to narcotics investigations. The White-Collar Crime Program was among the largest investigative programs and 89 percent of the work was in priority matters. Thus we drew some resources from the lower priority areas of the White-Collar Crime Program to address our new narcotics responsibilities. This is not to say the lower threshold matters will not be investigated, but rather the investigation may not be as timely as in the past. A major difference exists between narcotics investigations and white-collar crimes. While serious, white collar crimes do not often present life-threatening situations as narcotics investigations may. Therefore, white-collar crime investigations may be left "on-hold" for longer periods than certain narcotics matters. The FBI continues to regard white-collar crime as a priority area and stands ready to devote adequate sources to this significant crime problem. The reduction notwithstanding, the requested level for 1985 will provide the FBI with 161 full-time equivalent workyears and $24,806,000 above the levels actually used in 1983.

It is noted that some classes of White Collar Crime investigations such as political corruption may be reported as organized crime; however, it is not possible for the system always to distinguish between these classes of investigations.

Resale Price Maintenance

Last year, Congress included a provision in the FY 1984 Commerce-Justice-State appropriations bill which prevented the Department from seeking to alter the per se prohibition on resale price maintenance other than by legislative means. Congress took this action because the Department was attempting to persuade the judiciary to alter the settled interpretation of this issue. Will the Department of Justice agree to abide by the substance of the FY 1984 provision or will it be necessary for Congress to extend it another year?

Unless the law is changed by the courts or by Congress, resale price maintenance is per se unlawful, and the Division will enforce that per se rule.

Antitrust Division Reduction

What is the rationale for the 55 person (7.8 percent) reduction in the Antitrust Division? What effect will this have on antitrust enforcement?

This 55 person reduction should cause no significant decrease in effectiveness. Efficiencies through the use of modern automated litigation support and increased emphasis on sophisticated economic analysis in the early stages of investigations should help offset this decrease. The Division is using innovative computer-assisted methods to accelerate the handling of cumbersome documentation in large cases and to monitor active judgment compliance. The continued enhancement of this new technology will lessen the time and resources needed to complete investigations and litigation.

QUESTIONS SUBMITTED BY SENATOR SPECTER

State and Local Prison Construction

The May 3 "Statement of Administration Policy" on the D'Amato/Specter amendment to H.R. 2163 regarding prison construction states that:

> *"It is the Administration's understanding that manufacturers are unable to meet the present construction needs in a timely fashion. Therefore, additional funding within the same time frame would not produce new prison space quicker."*

I do agree that this statement, if substantiated, would indeed be compelling. Therefore, I would be most interested in discovering and understanding, thoroughly and in some detail, the bases for this statement. Specifically:

Is the Administration's understanding in this regard based upon generalized national data on construction industries? If so, please identify such data specifically, by source, publication and date. If such material is not excessively voluminous, please attach copies thereof to your response.

Is the Administration's understanding based upon an aggregation of state-by-state analyses? If so, please identify, again by source, publication and date, each such analysis considered or conducted with regard to each of the fifty states, and, if applicable, to each U.S. territory, together with a copy of the summary report or reports used, including a description of the assumptions and methodologies applied, in the aggregation of such analyses.

If the Administration's understanding is based upon neither of the preceeding data bases, please provide a description, in as precise detail as possible, of the specific bases for it, including all underlying theories and assumptions.

Does the Administration's understanding take into account any potential variations in the present vitality of the construction industries by state or between regions of the country? Or does the Administration assume that there are no such fluctuations in construction activity between, for example, Houston and Pittsburgh, or between rural midwestern areas and the urban northeast?

If the Administration's understanding does fairly reflect such fluctuations, please identify those regions, states or localities of the country where manufacturers would be relatively the most capable of meeting new construction needs in a timely fashion.

The Federal Reserve Board makes forecasts of industrial capacity use in certain areas, but it does not provide regular estimates of capacity use in the construction industry or any of the specialized industries that service prisons. George A. Christie, Vice President and Chief Economist for McGraw-Hill Information Systems Company recently estimated that in the current business cycle we are using about 85 percent of our current construction capacity. This is somewhat weaker than the top of normal business cycles. The nation currently is building commercial and industrial buildings at an annual rate of about 900 million square feet. Although the recovery has been good, this is still less than the 1.1 billion square feet constructed in 1979. For institutional buildings, Mr. Christie estimates we are building at the rate of about 300 million square feet, above the 250 million square feet constructed in 1981 but below the 400 million square feet levels reached in the mid-1970s. Except for the most recent period for which published data are not available, these data are consistent with the F. W. Dodge material included in the Statistical Abstract of the United States.

Prisons and jails, of course, are a very small part of the cverall construction industry but they do have specialized requirements that limit the number of contractors. National data on correctional construction is scarce, but we are able to draw on some statistical data and the experience of correctional personnel.

Through 1979, the Law Enforcement Assistance Administration monitored State and local spending for correctional facilities. Currently, the Bureau of the Census collects correctional construction data through its Annual Survey of Governmental Finances. States and a sample of local units of government report data expenditure for construction as well as for land and equipment. From 1974 through 1982, construction expenditures rose from $201 million to $876 million while expenditures for land and equipment climbed from $39 million to $132 million. During this period combined expenditures for State and local correctional facilities increased 320 percent. Since the Producers Price Index for material and components of construction increased 206 percent in the same period, a significant growth in real construction probably has occured. This is emphasized by the fact that the overall Consumer Price Index rose only 95 percent from 1974 to 1982.

Over the last six years State and local governments have had a steady growth in expenditures. Data from Census files show the following trend:

(In thousands of dollars)

	Construction	Equipment and Land
1977	$400,154	$107,508
1978	471,304	89,193
1979	526,384	97,251
1980	687,438	101,634
1981	787,972	119,153
1982	875,728	131,661

Although the Census data are obtained from each reporting entity, correctional construction expenditures are not published with geographic detail in regular Census Bureau reports although the data are available from the Census Bureau for State governments, State areas and large local governments.

Aside from the Census Bureau's Annual Survey of Governmental Finances, very little is done by the Federal Government to collect data on State and local government construction. The National Institute of Corrections is not a data collection agency and the Bureau of Justice Statistics (BJS) ceased collecting detailed corrections expenditure data in 1979. At the present time, BJS is publishing limited corrections data extracted from the Census Bureau's Annual

Survey of Governmental Finances. George and Camille Camp publish the Corrections Yearbook annually. This publication includes costs of construction by security level, but the published data provides nothing that would be helpful to measure unused construction capacity by geographic area. Moreover, the data may be subject to inter-state comparability problems because the survey does not define what should be included in the cost data.

Our experience with prison and jail construction is that an unusually long time tends to elapse between when construction is first authorized and when it is completed. Many of these delays have nothing to do with the ability of the construction industry. Instead, construction is delayed because satisfactory sites are difficult to locate and acquire, environmental impact statements may be required, legal impediments develop, bond authorizations must await regular elections, and governments delay the issuance of bonds to obtain favorable interest rates. All of these factors tend to impede any rapid acceleration in construction schedules.

Acceleration of prison construction could also have an adverse impact on price. Traditionally, some prison equipment has been made by only a few manufacturers. Increased demand for this equipment could slow delivery and force prices higher before other manufacturers could enter the field and submit competitive bids. Price increases of this nature took place in the mid-1970s when an inadequate number of experienced contractors were available to bid on sewage treatment plants. There are no definite indications that a moderate increase in prison and jail construction at this time would have adverse cost implications.

Federal Prison System Construction

I note that the Administration's appropriation request for Buildings and Facilities for the Federal Prison System in FY 1985 is $82.5 million.

What amount was requested for this account by the Justice Department in its submission to OMB? If such amount was higher than $82.5 million, was any action taken by your office to seek review of OMB's determination?

The Department request to OMB was $90.4 million. No action was taken to restore the items cut by OMB.

Assuming that $82.5 million is appropriated for this account for FY 1985, what will be the total dollar value of all remaining pending FPS construction projects for which the initial planning stages have been completed and which are or will at some time in FY 1985 be ripe for funding either for site preparation and design or for construction? Please identify all projects which comprise such backlog, by location, nature of the project (particularly with regard to whether and to what extent prison capacity would be expanded) and cost, and in order of their priority, to the extent possible.

While we have done initial planning on a second Northeast Federal Correctional Institution as well as additional housing units at existing facilities, none will be ready for site preparation or construction during FY 1985.

Prison Population Predictions

Recognizing that the prediction of future prison populations is still an imprecise art, I am nevertheless concerned that in the last three months, the Federal Prison System appears to have endorsed two significantly different "amalgamated forecast" methodologies, the most recent of which (in the April 23, 1984 report to the Appropriations Committees) reflects a significantly more optimistic view of prison overcrowding in the long term--a reduction in total estimated 1989 Federal prison population from 36,656 to 34,371.

Please describe the circumstances which have changed between the time the FPS furnished the higher projections to GAO for inclusion in the February 27, 1984 report, and the time of the report to the Appropriations Committees two months later, which would support this substantial shift in methodologies.

In the application of the simple trend extrapolation method, why was the growth rate assumption precipitately reduced from 9.16 percent to 3.4 percent? What new empirical evidence or significant advance in the art of prison population projection came to light in the intervening two months between the two reports?

The GAO report provoked welcome scrutiny of our forecasts. One criticism of our previous methodology was that it placed too much emphasis upon short term trends such as the very short term trend of 9.16 percent annual growth. Three of the six amalgamated methodologies incorporated short term trends.

Use of Long and Short Term Trend Methods. We accepted that criticism and incorporated a longer term trend methodology using a 1970-1983 trend of 3.4 percent annual increase. A distinctive part of the revised population forecast was continued use of a methodology using the short term population trends since this Administration has been in office. As described in the Federal Prison System Multi-Year Plan recently submitted to the Senate, this method accounts for the recent, substantial increases in Federal investigative and prosecutorial resources.

Please explain the basis for switching from a six-method amalgamated forecast in the GAO context to a four-method forecast in the later report. Please include explanations for the apparent melding of the linear regression and unemployment methods, and the complete elimination of the capacity method.

Conversion from Six to Four Methods. The conversion from a six method to a four method forecast eliminated redundancies and met valid criticisms of four of the six previous methods.

Combination of Linear Regression and Unemployment Methods. A criticism of the previous, separate use of the linear regression and unemmployment methods was that each method was based on regression techniques and annual trends and their separate applications were statistically redundant. The simple combination of the two techniques in one multiple regression method eliminated the previous redundancies.

Elimination of Capacity and Criminal Justice Models. Also, in our previous methodology we used a capacity model developed by the Abt Associates on a National Institute of Justice grant and a criminal justice system model using FBI and DEA convictions as predictors. Valid criticisms of the Abt capacity model indicated the model could be inappropriate for the Federal Prison System. Additionally, Kenneth Carlson, who developed the model, suggested that it not be used for the Federal Prison System. Consequently, we eliminated it.

The criminal justice system model was criticized because it was another form of the input-output model we still use. Furthermore, since the new methodology already incorporated an Administration policy trend component as well as an input-output model, we also eliminated the criminal justice system model.

Finally, it is important to note that the latest set of population forecasts incorporated an estimated reduction in the 1987-1989 population forecast due to planned increases in the average daily population in Community Treatment Centers (CTCs). This planned increase resulted in a reduction of 500 in the 1989 population forecast.

The Federal Prison System will continue to be sensitive to recommended improvements in our population forecasting methodologies.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Civil Division

Office of Immigration Litigation

Last year, the INS reimbursed the Civil Division $450,000 for the work of the work of the Office of Immigration Litigation. Why does not this office request sufficient funds for its operation instead of drawing on the INS?

The objective of establishing the Office of Immigration Litigation in the Civil Division was to consolidate these responsibilities into one centralized and specialized component within the Department. To assist in the initial formative effort, INS agreed to provide limited funding support. The Department and the Division agree that it would be preferable for the new Office of Immigration Litigation to directly fund activities previously supported by reimbursable funding. Based on actual experience with caseload levels of this office over the last several months, supplemental funding for 1984 was requested to address the full extent of this office's activities. Enactment of this supplemental will preclude the need for further funding by INS.

Criminal Division

Nazi War Criminals

How many Nazi war criminals have been deported from the United States since January 20, 1981?

One Nazi war criminal has been officially deported.

How many additional deportation orders does the Office of Special Investigations have pending against Nazi war criminals?

Two official deportation orders are pending. However, there are many investigations pending examination for deportation.

Antitrust Division

Bid-Rigging Convictions

For several years, the Antitrust Division has been conducting an investigation of bid-rigging in highway construction projects. We are also aware of the recent indictment in North Carolina of bid-rigging in connection with electrical construction work.

Please display for the record, by state, the cumulative number of firms indicted since 1980 for bid-rigging, the number convicted, the amount of fines assessed, and the amount of the fines collected.

State	Indicted	Convicted	Assessed	Collected
Alabama	1	...	...	...
Arkansas	2	2	150,000	...
California	7	7	565,000	324,000
Colorado	12	7	1,605,000	1,075,000
Delaware	1	1	to be sentenced	...
Florida	22	17	3,335,000	1,200,000
Georgia	17	17	5,335,000	3,420,333
Indiana	4	4	1,200,000	850,000
Iowa	8	3	1,550,000	942,500
Kansas	14	12	3,565,000	2,820,500
Kentucky	11	2	450,000	...
Maryland	13	12	995,000	782,000
Mississippi	2	1	200,000	200,000
Nebraska	15	13	4,256,000	941,000
New York	7	awaits trial	...	...
North Carolina	37	36	9,816,000	8,655,400
Oklahoma	1	1	75,000	on appeal
Pennsylvania	27	25	7,241,500	3,090,667
South Carolina	16	15	1,840,000	1,220,000
South Dakota	2	2	400,000	...
Tennessee	32	31	7,808,000	5,213,000
Texas	35	32	3,853,500	1,765,079
Vermont	2	2	450,000	100,000
Virginia	31	28	6,515,000	5,685,000
Washington	6	2	1,000,000	...

Organized Crime Drug Enforcement

The recent annual report of the Organized Crime Drug Enforcement Task Force Program (OCDE) states that 264 indictments involving 1,232 defendants have so far been produced. How many of those indictments have resulted in convictions, and what has been the average sentence?

The 264 indictments returned as of December 31, 1983 named 1,232 defendants. Of those, 337 defendants were convicted and by the end of the year, 216 of those convicted have been sentenced. Most of those 216 were sentenced to terms of incarceration and fined. The average sentence was eight years.

Since December 31, 1983, an additional 235 convictions have been obtained. Sentencing data for those individuals who have been sentenced are consistent with those reported during the earlier period.

As the report indicated, virtually all of the 1,232 task force indictments so far resulted from 200 investigations that were in pre-indictment stage when the task forces began operating in 1983. When can we expect to see indictments from the cases originated by the task forces?

As of May 1, 1984, the task forces have initiated 386 additional cases and have indicted over 1,100 more individuals. Since the number of indictments returned thus far in calendar year 1984 exceeds by 193 the number of indictments returned during all of calendar year 1983, we can expect that the task forces will, during their second year of operation, more than double the number of indictments returned during the first year. The majority of those indictments are the result of task force initiated cases. It is important to keep in mind, however, that the complex nature of task force cases virtually assures lengthly pre-indictment investigation--generally lasting anywhere from 6 to 18 months. Therefore, most cases initiated after the formation of the task forces will not come to fruition until the latter part of this year.

What will be the relationship of the new task force to be headquartered in Florida to the South Florida Task Force that operated under the aegis of the Vice President?

The Associate Attorney General designated personnel from his staff to develop a design which will maximize the benefits of both the Vice President's South Florida Task Force/National Narcotics Border Interdiction System (VPSFTF/NNBIS) and the OCDETF.

Planning sessions are currently being conducted with all of the affected agencies and offices in Florida, the Virgin Islands and Puerto Rico as well as in Washington.

The VPSFTF was created on June 28, 1982, to assist and coordinate Federal drug enforcement efforts with those of State and local authorities in South Florida.

The primary objectives of the South Florida Task Force were to reduce significantly the influx of illegal drugs coming through Florida by greatly increasing air, sea, and land interdiction efforts, and to arrest and convict narcotic violators involved in smuggling activities. The principal feature of the Task Force, which added a new dimension to South Florida law enforcement, was the establishment of the DEA-Customs Joint Task Group, which became operational on March 15, 1982. The agreement enhanced the task force's ability to interdict and investigate drug-related crime by joining DEA's and Custom's authority and capability for conducting narcotics investigations.

Another major effort against the national narcotics problem was announced by the White House in March 1983, several months after the creation of the Task Force Program. The NNBIS was created and charged with coordination and dissemination of intelligence pertinent to interdicting drugs crossing U.S. borders. Six NNBIS Centers, headed by Customs and Coast Guard personnel, gather and coordinate information. NNBIS was conceived and initiated in part because of the South Florida Task Force's success in closing the traditional avenues of smuggling. Other Federal agencies serve as members of the NNBIS staff and provide liaison personnel and intelligence analysts for follow-up on cases within their own agencies. Liaison with State and local law enforcement has also been established, which facilitates the gathering and analysis of intelligence information relative to interdiction matters.

Both the South Florida Task Force and the National Narcotics Border Interdiction System have, as their principal focus, the interdiction of drug smuggling activities and the follow-up investigation of such activities.

The OCDETF program is a natural complement to the VPSFTS/NNBIS with its focus on the investigation and prosecution of high-level traffickers and the laundering of drug profits from across the nation.

The Florida/Caribbean OCDETF will be the final part of a network which blankets the nation with a coordinated drug enforcement effort. The Florida/Caribbean OCDETF clearly addresses a different concern than does the VPSFTF/NNBIS.

Although the focus of the two efforts differ, it is clear that a partnership between them and also between other aspects of the Florida/Caribbean drug enforcement scene is essential.

In the middle and northern districts of Florida, the Virgin Islands and Puerto Rico many additional groups and collective efforts are struggling against the drug problem frequently with limited knowledge of the work done by others.

The efforts now under the direction of the Associate Attorney General are intended to design a program for the Florida/Caribbean area which will maximize the activities of the current interdiction efforts, current traditional and special investigations activities such as Operation Greenback, with the advantages of a region-wide OCDETF with its long range investigation and prosecution orientation. Clearly, many of the interdiction and traditional cases will tend to develop into the high level trafficker case which is the essence of the OCDETF program resulting in a further integration of the respective programs.

It is anticipated that the advantages of the OCDETF Program reported in the first Annual Report of the OCDETF can be infused into the difficult and complex Florida/Caribbean environment in such a way as to improve further the communication and coordination of all drug enforcement efforts in this critical area.

Immigration and Naturalization Service

Consolidation of Primary Inspections

Last November, the Administration announced a plan for border inspection consolidation. Basically, this plan transfers responsibility for all land border passenger primary processing to INS, with Customs to assume such responsibilities at airports and seaports.

It is now May 9th and the clock is ticking away on the 98th Congress, yet no regulation to carry out this plan has been transmitted. When will the reorganization be transmitted to Congress?

The Administration is awaiting congressional approval of reorganization authority. Once this approval is obtained a reorganization plan will be submitted. If approval is not forthcoming legislation will be sought to allow consolidation to proceed.

There is considerable concern that this reorganization will lead to less control of narcotics at the borders. How many narcotics cases were originated by INS in FY 1983, and how will this plan affect the control of narcotics?

INS made 3,514 narcotics seizures during FY 1983, 1,124 of which were INS seizures and 1,743 were joint seizures with other agencies. Additionally, 1,331 intelligence leads relating to narcotics were furnished to other agencies.

INS was involved in the seizure of narcotics valued at $57,618,664. Of this, $28,709,656 was done by INS and $28,909,008 was made in joint operations with other agencies.

By placing the primary responsibility for the interdiction of narcotics within the INS it will also place the majority of the responsibility for the interdiction and investigation of narcotics smuggling across the land borders within the Department of Justice. This will allow the Attorney General, who has the responsibility for enforcing all narcotics related laws, to establish a single set of priorities which will be carried out by all agencies within the Department and will improve the overall management of the problem. It will also serve to increase the efficiency of the agencies involved through the elimination of conflicting directions and the problems inherent in the transmission of information between departments.

INS Narcotics Seizures

Inspections and Investigations

Sole Inspections/Investigation Seizures	$ 1,460,089
Joint With Other Agencies	26,794,769
Total	28,254,858

Border Patrol

Sole Border Patrol Seizure	$27,249,567
Joint With Other Agencies	2,114,239
Total	29,363,806

INS As a Whole

Sole INS Seizures	28,709,656
Joint With Other Agencies	28,909,008
Total	57,618,664

The value of joint seizures between INS and other agencies increased from $8,784,938 in 1982, to $28,909,008 in 1983.

The 1983 figures are preliminary and do not represent official statistics yet.

The values shown in all INS statistics reflect the valuation supplied to INS by the receiving agency.

The Customs people are anxious about the number of personnel on the borders. (A) By agency and activity, how many people do we now have on the borders performing the activities covered in the consolidation? (B) On the same basis, how many people would be involved in those activities after consolidation? (C) In what areas are reductions proposed, i.e., inspectors or supervisors, etc.? (D) Why is there an overall decrease in view of the professed lack of personnel on the borders as evidenced by the 850-position increase for the Border Patrol?

Seven hundred and fifty-six permanent INS Immigration Inspectors are assigned to land border operations. Additionally the Service's permanent staff is supplemented by 412 temporary and part-time employees.

Following consolidation Customs would transfer 622 workyears of effort to INS for a total land border inspectional staff of 1,788.

No reductions attributable to transfer of functions under consolidation are being proposed.

The consolidation plan transfers land border inspection functions—and corresponding resources—from Customs to INS. The plan does not address the overall issue of border inspection staffing, workload, and resources.

Anyone who has visited a land border port-of-entry knows that some of the gates are manned by INS and others by Customs. Customs and INS primary inspectors are currently cross-trained and cross-designated at most locations. (A) On any given night, how many of the primary inspections at land entry points are conducted by INS vs Customs personnel? (B) Last night, what was the ratio of INS to Customs assigned to the gates at the 10 largest stations?

On an average night INS conducts 156,000 primary land border inspections while Customs conducts 206,900.

Last night at the 10 largest ports INS staffed 45% of total lanes compared to Customs' 55%.

The plan proposes to transfer 165 Customs Patrol Officer positions to INS. (A) Am I correct that the Customs Patrol succeeded the former Sky Marshals program, and what is its mission within Customs? (B) Are the 165 positions the total Customs Patrol complement? (C) How does the training of the Customs Patrol compare to the Border Patrol? For instance, I believe the Border Patrol requires a knowledge of Spanish. Is there such a requirement for the Customs Patrol?

When the Sky Marshals program was phased out during the early 1970's, these persons were brought into an existing program at the ports-of-entry and expanded to patrol between the ports.

As stated in their course syllabus "The primary mission of the Customs Patrol is the interdiction of narcotics and other contraband being smuggled into the United States." An additional mission statement included in the same syllabus reads:

> The mission of the Patrol Division of Customs is to:
>
> 1. Interdict smuggled merchandise, articles, and contraband between and at legal ports-of-entry.
>
> 2. Detect violations of customs and related laws and apprehend violators.
>
> 3. Reduce pilferage of imported/stolen merchandise, goods, and articles and prevent their entry into the commerce of the United States.

The Border Patrol Academy is 17 weeks long while the Customs Patrol Academy is 13 weeks long. The major difference between the two academies is that the Border Patrol has a Spanish language retention requirement which the Customs Patrol does not.

The Border Patrol course of study continues with post-Academy training until the trainees have 10 months of service. There are two probationary examinations in both Spanish and law which the trainees must pass during the post-Academy period or termination will result. The Customs Patrol has no post-Academy training or testing.

The Border Patrol Academy and post Academy are validated under the uniform guidelines on employee selection procedures. At this time it is unclear whether or not the Customs Patrol course is validated under these guidelines, however, their February 1984, syllabus indicates that the course establishes standards to ensure that evaluation and completion requirements are valid in relation to the task analysis and the job.

The Border Patrol course has 258 hours which are taught by the Federal Law Enforcement Training Center (FLETC) staff and 413 hours taught by the Border Patrol staff. The Customs Patrol course has 293 hours which are taught by the FLETC staff and 219 hours which are taught by Customs.

Each agency receives 12 hours of cross training in the duties and authorities of the other.

The 165 Customs Patrol positions to be transferred to the Border Patrol represent over 50% of the Customs Patrol positions assigned to the land border, however, their total complement is approximately 1,200 positions.

Border Patrol

Mr. Chairman, I will submit for the record at this point, a chart displaying the Border Patrol staffing.

BORDER PATROL AUTHORIZED AND ON DUTY 1981 - 1984 **April 30, 1984**

	FY 1981 (January) Authorized	FY 1981 (January) On Duty	FY 1982 (April) Authorized	FY 1982 (April) On Duty	FY 1983 (May) Authorized	FY 1983 (May) On Duty	FY 1984 (April) Authorized	FY 1984 (April) On Duty
EASTERN REGIONAL OFFICE	3	2	3	2	3	3	3	3
Buffalo Sector	31	30	31	28	39	37	39	38
Ogdensburg Sector	28	28	28	26	1/	..	..	..
Swanton Sector	50	47	51	50	71	67	71	63
Houlton Sector	34	30	34	34	34	30	34	34
Regional Totals	146	137	147	140	147	137	147	138
SOUTHERN REGIONAL OFFICE	6	5	6	5	6	5	6	5
El Paso Sector	412	397	427	402	425	404	425	410
Marfa Sector	124	116	133	117	133	129	133	128
Del Rio Sector	227	210	231	213	229	218	229	220
Laredo Sector	151	142	166	141	166	150	166	197
McAllen Sector	201	189	211	193	210	201	210	196
New Orleans Sector	46	37	39	34	39	37	39	39
Miami Sector	37	30	51	30	74	57	74	54
Regional Totals	1,196	1,126	1,264	1,135	1,282	1,201	1,282	1,249
NORTHERN REGIONAL OFFICE	3	2	3	2	3	3	3	3
Blaine Sector	32	28	32	30	32	32	32	31
Spokane Sector	28	28	28	27	28	28	28	26
Havre Sector	30	29	31	27	31	29	31	29
Grand Forks Sector	36	32	36	33	36	32	35	34
Detroit Sector	28	22	28	21	28	24	28	23
Regional Totals	157	141	158	140	158	148	157	146
WESTERN REGIONAL OFFICE	8	6	8	6	8	7	8	7
Chula Vista Sector	579	554	597	532	595	560	596	551
El Centro Sector	196	183	211	178	204	190	209	171
Yuma Sector	186	184	182	170	199	189	199	181
Tucson Sector	172	175	200	183	182	166	181	174
Livermore Sector	73	56	66	59	66	56	66	65
Regional Totals	1,208	1,158	1,264	1,128	1,254	1,196	1,259	1,149
CENTRAL OFFICE	16	14	57	14	25	18	20	18
TOTAL	2,725	2,576	2,890	2,557	2,866	2,700	2,865	2,700

1/ Ogdensburg Sector was closed in June, 1982. Positions from this sector were divided between Buffalo and Swanton.

Positions	1981 Authorized	1981 Filled	1982 Authorized	1982 Filled	1983 Authorized	1983 Filled	1984 Authorized	1984 Filled
Officer	2,289	2,218	2,429	2,186	2,413	2,291	2,409	2,281
Pilot	59	42	59	42	63	48	63	52
Support	377	316	402	329	390	361	393	367
Total	2,725	2,576	2,890	2,557	2,866	2,700	2,865	2,700

As of April 30th there were some 165 vacancies in the Patrol, 110 of which were in the crucial Western Region. In fact, even though the President, the Attorney General, and the Commissioner are all from California, we have fewer people on patrol in the West than we had when Jimmy Carter was President.

According to this chart, we have authorized 51 more Border Patrol positions for the Western Region since January 1981. Why is it that the number on duty is less than it was three years ago?

As of October 1, 1983, there were 1,230 filled positions in the Border Patrol in the Western Region. Unexpectedly high attrition brought that level down to the present number. We are now working to correct the situation. All of the 164th and 165th Sessions at the Border Patrol Academy will go to the Western Region before the end of this fiscal year. Additional classes beginning in 1985 will be sufficient to restore the workforce quickly.

Steps have been taken to expand the capacity of the Federal Law Enforcement Training Center at Glynco, Georgia to handle additional Border Patrol trainees. This expanded capacity will allow for accelerated recruiting and training schedules for new positions in 1985, and will also allow for more flexibility in adjusting classes scheduled in later years.

The 1985 request allocates 267 of the new Patrol positions for Chula Vista. There are currently 45 vacancies in that sector. Has the situation changed in that sector, or why doesn't the present staffing match the priorities in the justification?

The illegal alien situation is still serious in Chula Vista. Officers at Chula Vista set a new record for a single day's apprehensions on February 1984, and set a new record for monthly apprehensions in March 1983. This is the reason that Chula Vista is targeted for the largest increase in our proposed enforcement enhancement package.

On October 1, 1983, there were 524 agents on duty at Chula Vista out of an authorized force of 525. Unfortunately, Chula Vista suffers from a high attrition rate due to its being a high cost-of-living area with an extremely demanding workload. To address the situation, all of the 164th Session of the Border Patrol Academy beginning in July is scheduled for that sector. Beginning in October, we have plans for a new class of 48 trainees every two weeks. There should be little difficulty in staffing Chula Vista under these circumstances.

What lapse rate was used on the new positions for FY 1985? How do you expect to maintain that rate when you can't keep your present positions filled?

Because the decision to fund the new 1985 positions was made at the highest levels of the Administration, the question of lapse rate was not discussed. Rather, the allowance was reflected in a way that most accurately conveyed the decision.

INS does not, and never expected to hire all 1,000 new positions on October 1. However, 22 Border Patrol Academy classes have already been scheduled at the Federal Law Enforcement Training Center. These classes will accommodate 1,056 trainees, enough for all the new agents plus attrition from the existing workforce. We are already accepting and testing applicants for these positions. Therefore, if the funds are appropriated, the Border Patrol is in a position to immediately begin hiring and training new agents in accordance with our proposed class schedule. Although there will be a considerable lapse for the new positions because the training cycle for the 22 classes automatically necessitates a high lapse, the estimates before the Congress do not address the need to replace a number of border stations and provide the support services necessary to accommodate a large influx of new border patrol agents.

In view of all the ex-Vietnam and laid-off airline pilots, what accounts for the 11 pilot vacancies?

Due to the unique type of flying performed by Border Patrol pilots, the Service has determined that an agent/pilot position is required. This recruitment is based on the fact that most flying for the Patrol is done at low altitudes and at slow speeds in order to observe illegal entries that have been made across the international boundaries. In some cases pilots are even required to land and apprehend the aliens themselves. A pilot must understand and be thoroughly knowledgeable in tracking techniques, Spanish, and law enforcement skills, therefore, we require trainees to have a minimum of three years as an agent. In addition, the Office of Personnel Management requires that a pilot candidate possess a commercial pilot's certificate, instrument rating, 1,500 hours, 250 hours as pilot-in-command time, along with 100 hours within the last 12 months. These stringent requirements have contributed to our current pilot vacancies.

To address this situation we have reinstated an in-house pilot training program which we feel will overcome the vacancy situation. Six pilot trainees are currently enrolled in the program and are in the process of acquiring the needed experience required by OPM regulations.

Border Patrol Increase

The 1985 budget request includes an increase of 850 positions and $35,356,000 for the Border Patrol. Associated with the new positions are 850 workyears which indicates that INS expects all the new positions to be recruited and on-board on October 1, 1984, and to stay continuously filled through September 30, 1985.

In 1983, the Border Patrol fell 22 workyears short of the number allowed by Congress. Similarly, the Border Patrol was 165 positions under its authorized strength on April 30, 1984. Historically, the Border Patrol has always had a difficult time in filling its positions. In view of that history, why was the full new complement budgeted for in 1985?

INS reflected full funding for the new positions in 1985 on instructions from the Department of Justice and OMB. There was a concern that INS should present the full recurring cost of the enforcement package in the first year, rather than present a smaller, perhaps misleading total in 1985, only to have it increased by annualization in 1986. The 1985 budget states that in 1983 the Border Patrol achieved 2,713 workyears out of a workyear ceiling of 2,735. This equates to 99.2% of the workyear ceiling.

What is the total annual cost of the salaries of the 850 new positions?

Base Salaries	$20,656,000
Other Personnel Compensation	4,604,000
Benefits	3,916,000
Total	29,176,000

Ordinarily, a lapse of at least 25 percent is applied to new positions to allow for recruiting delays. Could we not just deduct 25 percent of the response to the above question from your request, plus an appropriate amount for the associated personnel benefits?

A lapse figure of 25% is indeed reasonable for recruiting delays for new positions, and would ordinarily have been reflected. Because of a concern that the full annual cost of this proposal be reflected in the budget as submitted, the positions were reflected as being fully funded. Some savings in salary funds were anticipated to result from normal delays in hiring. It was intended to reprogram these savings toward construction of essential facilities related to the enforcement program during the budget year. Any reduction in these funds would be very detrimental to the overall impact of the enhancement package.

To be fair, I am informed that INS realizes that it overbudgeted workyears and did not make sufficient provision for equipment, vehicles, and other costs of the new positions. Do you have a revised budget for the Border Patrol increase for FY 1985?

Yes. A package has been prepared which specifies lapse on new positions and requests specific construction projects in support of the Border Patrol. The lapse amount equals the amount shown for construction projects, so the original intent of presenting the full annual cost of the package in the first year is preserved. We feel that this is a very workable proposal.

The revised budget for the Border Patrol would reflect a reduction of 283 workyears and $7,798,000, resulting in a revised total of 3,715 positions, 3,377 workyears and $152,260,000. This would provide additional funding of $7,798,000 to the construction and engineering program.

There are indications that a lapse of 25% will more than cover the unbudgeted other costs of the new positions. Apparently, INS plans to use the remainder for construction of Border Patrol stations. (A) When did INS plan to tell the Committee about their construction plans? (B) Please provide a summary of the construction pro-

gram envisioned. The summary must be in sufficient detail to persuade us that the funds should not be denied in view of the Government's overall fiscal situation.

INS planned to formally notify the Committee through the normal reprogramming process as soon as possible in 1985. There was discussion on this issue in each of the Senate and House authorization hearings and in the House appropriations hearing.

The construction plans are to replace facilities that the Border Patrol outgrew years ago and to accommodate personnel increases associated with the enhancement package.

In some cases, the situation has become so serious that it was necessary to lease facilities because existing Border Patrol buildings were too small or too decrepit to support operations. This lease money may come from salaries.

The following lists the costs of the various facilities:

Douglas, Arizona - Border Patrol Station and Garage	$1,104,000
Naco, Arizona - Border Patrol Station and Garage	486,000
Ajo, Arizona - Border Patrol Station and Residences	1,128,000
Chula Vista, California - Border Patrol Station	1,518,000
Campo, California - Border Patrol Station	971,000
El Paso, Texas - Border Patrol Station	2,591,000
Total	7,798,000

Justification for each of the facilities follows.

Douglas, Arizona Border Patrol Station

A. Description: A new facility consisting of 4,000 square feet; $1,104,000

1. Male and female hold rooms
2. Locker rooms
3. Office and squad room
4. Processing area

A new storage garage for 15 vehicles 4,500 sq. ft.

B. Justification

The station has operated in the Douglas Border Station for many years in extremely unsatisfactory and cramped quarters. The facility has a design capacity of six officers, but the present authorized force consists of 28 officers and one clerk. There is no room for necessary expansion. Apprehensions number 6,000 annually. Requirements include a suitable station with adequate office, processing and interview space, holding rooms for both sexes and vehicle storage.

The Douglas Station, consisting of 1,674 square feet is located in the Government-owned building at the port-of-entry. The office office area consists of seven rooms that are inadequate and not functionally suited to accommodate the present work force of 28 positions. Vehicle storage for 20 vehicles is on an open unfenced lot adjacent to the border. Construction of a 4,000 square foot new station with a secured storage garage at a location sufficiently removed from the international boundary would meet the station's functional need and provide the desired operational security.

Naco, Arizona Border Patrol Station

A. Description: A new replacement facility consisting of 1,000 square feet; $486,000

1. Hold rooms
2. Locker rooms
3. Office and squad room
4. Processing area

A new storage garage for 8 vehicles 2,400 sq. ft.

B. Justification

The Naco Station is located in a building at the port of entry. It occupies one room on the ground floor. Two detention rooms are in the basement. The arrangements of the office space and detention facilities are not conducive to good security arrangements. The combined space of the office and detention rooms is 950 square feet. With the present authorized work force of 12 agents these accommodations are considered inadequate and will not meet the future needs of the station. Requirements include a suitable station with adequate office, processing and interview space, holding rooms for both sexes, and vehicle storage.

The construction of an new station location site sufficiently removed from the border is desirable because it would provide operational security as well as functional work space for present and future personnel needs. Storage garage facilities and a secured vehicle seizure compound are also recommended.

Ajo, Arizona Border Patrol

A. Description: A new station consisting of 1,000 square feet; $1,128,000

1. Office and processing area
2. Male and female hold rooms
3. Locker for 6 agents (additional)

A vehicle garage for 6 vehicles - 1,800 sq. ft. and 6 residences.

B. Justification

The present station is located in a trailer which is most unsatisfactory for the operation. The station is authorized 13 officers. Requirements include a suitable station with adequate office, processing and interview space, holding rooms for both sexes and vehicle storage.

The scarcity of suitable housing in the area necessitates that officers' housing be provided. The present arrangement consisting of two 16 X 60-foot mobile home trailers with a total square footage of 1,440 is inadequate and unacceptable as a federal facility.

The working conditions for the agents and the detention facilities for the aliens need to be improved. The deteriorating condition of the trailers will require removal of an evaporative cooler that constantly leaks water through the roof and onto a holding cell. Replacement of the whole roof also appears inevitable.

Chula Vista, California Imperial Beach Border

A. Description: A new facility consisting of 8,000 square feet; $1,518,000

1. Hold rooms for both male and female
2. Office and processing area
3. Squad room
4. Lockers and toilet facilities
5. Garage facilities for government vehicles

B. Justification

A large FY 1985 personnel increase (267 positions) for the Chula Vista Sector will result in a major realignment of operational responsibility of several Border Patrol stations within the sector and the creation of a new station at Imperial Beach, California. The new station will assume linewatch responsibility for the present Chula Vista Station and will have 150 officers assigned to it. Approximately 142,000 aliens per year

1. Office and squad room
2. Male and female hold rooms
3. Interrogation rooms
4. Processing area
5. Sector pilots office

Storage garage for vehicles and bus repair garage.

B. Justification

The present station cannot house the increased Border Patrol force nor the processing operation of increasing numbers of apprehended aliens.

The current El Paso Station is located in the sector headquarters building and was constructed in 1967, to house 70 officers apprehending 8,000 aliens per year. The authorized force at the present time is 176 officers and will be increased to 200 officers in FY 1985. Their apprehensions for FY 1983 were 140,826. There is a severe lack of interview rooms and adequate facilities do not exist for the anti-smuggling unit. The current needs are for a new building to house the Border Patrol Station which will allow sufficient quarters for the sector and the anti-smuggling unit. The need for adequate detention facilities for undocumented aliens of both sexes, interview rooms, and suitable space for officers is critical to the continual effective operation of this station. The space vacated in the sector headquarters will be adequate for the sector headquarters staff and the anti-smuggling unit.

The bus repair facility is necessary because the fleet of buses belonging to both the El Paso Sector and the El Paso Service Processing Center is repaired by El Paso Sector mechanics. At the present time, there is not sufficient space inside the existing garage to work on a bus inside the garage. Therefore, all maintenance at the present time must be performed either with the bus outside the garage or partially in the garage with the doors left open.

The wind and dust conditions in the El Paso area are extreme at times and often last for several days causing delays in maintenance and repair work due to sand, dust and grit covering working areas, tools, parts and disassembled engines. These conditions undoubtedly contribute to increasing breakdowns in our automobile equipment. The proposed garage will provide a dust-free work area and result in considerable saving of time, effort and money to the Service.

Other INS Staff Increases

Similar to the Border Patrol increase, the positions and workyears are identical for the staff increases requested for antismuggling (19); detention and deportation (108); training (1); and legal proceedings (18).

If these positions were lapsed 25 percent, how much could we deduct from the request in salaries and benefits savings?

Lapsing the requested positions by 25 percent would result in a reduction of 36 workyears and $951,000 distributed as follows:

	Workyears	Amount
Anti-Smuggling	-5	-$155,000
Detention & Deportation	-27	- 589,000
Legal Proceedings	-4	- 207,000
Total	-36	- 951,000

INS Regulatory Changes

The Commissioner's State of the Service report at last October's Leesburg conference indicated that 55 workyears and $27,800,000 had been saved by regulatory changes. Page 62 of the justifications how "Savings Resulting from Management Initiatives" amounting to *only $740,000, due to reducing GS-11 to 15 positions and printing facilities. What happened to the $27,800,000 saved by regulatory changes?*

You are correct. An annual savings of $27.8 million and 55 workyears has been realized through regulatory changes. The dollar savings includes $2.8 million in cost avoidance within the INS appropriation and $25 million to the general treasury as a result of revised fee schedule.

It was also indicated at Leesburg that a fee schedule revision would produce an additional $25,000,000.

How is that effort coming along?

Immigration and Naturalization Service fees were increased effective May 5, 1983.

Which fees are being increased?

FORM/ APPLICATION	PROPOSED	ADOPTED	INCREASED
G-641, Application	$15.00	$15.00	$10.00
For certification	2.00	2.00	-0-
For attestation	2.00	2.00	-0-
I-17	50.00	50.00	30.00
I-90	15.00	15.00	-0-
I-102	15.00	15.00	10.00
I-129B	35.00	35.00	20.00
I-129F	35.00	35.00	20.00
I-130	35.00	35.00	25.00
I-131	15.00	15.00	10.00
I-140	50.00	50.00	25.00
I-191	50.00	50.00	15.00
I-192	35.00	35.00	20.00
I-193	15.00	15.00	10.00
I-196	15.00	DISCONTINUED	(5.00)
I-212	35.00	35.00	15.00
I-246	110.00	70.00	-0-
I-256A	110.00	75.00	-0-
I-290A	110.00	50.00	-0-
I-290B	110.00	50.00	-0-
I-485	50.00	50.00	20.00
I-506	15.00	15.00	5.00
I-538	15.00	15.00	15.00
I-539	15.00	15.00	10.00
I-570	15.00	15.00	10.00
I-600	50.00	50.00	15.00
I-600A	50.00	50.00	15.00
I-601	35.00	35.00	-0-
I-612	50.00	50.00	15.00
N-400	35.00	35.00	20.00
N-410	15.00	15.00	10.00
N-455	15.00	15.00	5.00
N-470	15.00	15.00	5.00

FORM/ APPLICATION	PROPOSED	ADOPTED	INCREASED
N-565	15.00	15.00	5.00
N-577	15.00	15.00	5.00
N-580	15.00	15.00	10.00
N-600	35.00	35.00	20.00
Motion to reopen or reconsider	110.00	50.00	-0-
Request for temporary withholding of deportation	110.00	50.00	-0-
Request for statistical tabulations	COST	COST	-0-
Request for passenger travel tables	7.00	7.00	-0-
N-300/315	15.00	15.00	10.00
N-405/407	50.00	50.00	25.00

Do you find that your fees adequately reflect the service rendered?

Yes. Fee revisions were made in accordance with OMB Circular A-25 which requires cost recovery. FY 1983 collections were $28.9 million. This reflects 7 months under the old fee structure and 5 months under the new and higher fee structure. Through the 2nd quarter FY 1984, fee collections are $20.3 million.

NOTE: The estimated additional $25.0 million in fee collections was based on a full year under the old fee structure and a full year under the new fee structure. Fees were, however, increased in mid-year, thus not allowing for a precise determinationn of additional annual revenue for fee remittances from increased fees for FY 1983 to FY 1984.

Overtime

Mr. Commissioner, in opening your annual conference at Leesburg, Virginia, last October 16, you stated that inspection overtime had reduced by 23%. However, the reprogramming notice of last September 30 indicated that the inspections program has been increased by $3,000,000 "to fund higher staffing levels and 1931 Act overtime." What was it for inspections, more or less overtime?

Total inspectional overtime under the 1931 Act decreased $2.6 million from FY 1980 to FY 1982. In FYs 1982 and 1983 the Service had its budget authority reduced $5.2 million in anticipation of a repeal of the 1931 Act. A subsequent review of the data showed that the conclusions drawn before the conference were not correct and were based on preliminary data. More detailed analysis did not show savings at this level.

For several years the Appropriations Bill has contained language prohibiting overtime pay in excess of $20,000 per year to any employee, unless the Commissioner finds it necessary to grant exceptions. Were any exceptions granted during FY 1983 or 1984 to date?

The $20,000 per year cap on individual overtime earnings continues in effect. No exemptions were granted during FY 1983; nor have any been granted so far this year.

1984 Supplemental

INS has requested a supplemental appropriation of $9,381,000 for increased pay costs. How much remains available of the appropriation for Fort Allen, and what use is planned for these funds?

A total of 82 positions, 119 FTE, and $5.5 million remains of the original resources received in the Fort Allen package. A portion of these funds, $2.0 million, is currently being used to fund a detention contract in Houston, Texas in order to fulfill immediate detention and deportation needs along our southern border. The remaining $3.5 million covers salaries and benefits of on-duty personnel associated with this package. These positions and temporary workyears are spread over five decision units.

The 1984 column of the Personnel Summary in the Budget Appendix for FY 1985 provides for 10,710 compensable workyears of full-time equivalent employment, and 3,252 full-time equivalent of overtime and holiday hours. Through April 30, 1984, what has been the full-time equivalent employment and the full-time equivalent of overtime and holiday hours?

Employment figures are not available yet for April. However, the Service expended 4,866 full-time equivalent regular and 1,818 full-time equivalent overtime and holiday hours for FY 1984 through March 31.

1983 Reprogramming

On September 30, 1983, there was transmitted to the Committee a reprogramming notice covering 121 positions, 193 workyears and $16,100,000. The letter stated that "If approved, these adjustments will allow INS to reflect an alignment of its personnel and budget, etc."

What kind of response did you expect to receive from the Committee in transmitting a reprogramming on the last day of FY 1983? Our side refused to participate in such a sham; is it not true that most of this realignment had already occurred?

As you have surmised, the realignment had already occurred and the Department's basic purpose in submitting the notification at such a late date was to keep you advised. Otherwise, this action would not have been evident until the Department's 1985 budget was submitted in January 1984.

We are informed that INS originally submitted the reprogramming to the Department in June. What accounts for the delay in submitting it to the Committee?

INS submitted an informal draft reprogramming proposal to the Department of Justice on July 11, 1983. The Department's policy officials informally recommended that INS reconsider several proposals that appeared to be inconsistent with Administration policy and congressional intent.

INS on August 1, 1983, submitted its official reprogramming request, again including proposals that were inconsistent with Administration Policy. Department officials recommended that INS reconsider its reprogramming proposal.

A revised reprogramming proposal was submitted on September 2, 1983, and after several discussions with INS staff, was approved by the Department on September 27, 1983. OMB was notified on September 29, 1983, and the Congress received notification of INS' proposal on September 30, 1983.

While it clearly is not the intent of the Department to submit reprogramming notifications on the last day of the fiscal year, it sometimes takes considerable time to negotiate a proposal that will receive OMB approval and satisfy congressional concerns.

The Department, in notifying the congressional committees of reprogramming actions, is doing its best given the rather restrictive reprogramming criteria set by the Congress. In dealing with multimillion dollar appropriations, it sometimes becomes very difficult to know months in advance when a program's final expenditures will differ by $250,000 from its congressionally approved budget.

The Department has made it very clear to the subordinate agencies how important reprogramming actions are, and we remind our agencies periodically that known reprogramming proposals should be submitted to the Department as soon as possible.

Federal Prison System

Prison Facilities

As of April 24, 1984, there were 31,730 prisoners confined in the Federal Prison System. As a result, the prisons were 3% over their operational capacity and 30% over their rated capacity.

What will be the increase in the rated capacity when all the facilities funded through FY 1984 are completed?

Rated capacity of the Federal Prison System will be increased by 3,292 beds when all capacity increases funded through 1984 are completed. This capacity increase reflects an increase through new construction of 500 beds, an additional 1,410 beds through acquisition and conversion of surplus property and an increase of 1,382 beds through expanding capacity at existing institutions.

How much additional capacity will be added by the facilities requested for FY 1985?

The 1985 budget request would provide for 500 additional beds through new construction (excluding consideration of site and planning funds requested for a Southeast Federal Correctional Institution), and 758 additional beds for expanding capacity at existing institutions, for a total increase of 1,258 beds.

Recently, the Subcommittee approved a reprogramming that included $14,000,000 to purchase a former mental hospital in Rochester, Minnesota. We are informed that the State transferred this property to the local county commissioner for one dollar. According to the Rochester newspaper, the $14,000,000 is to be used for higher educational facilities and a trash recycling center, and to provide no-interest loans to prospective purchasers of residential property near the site.

Why should the taxpayers at large provide a $14,000,000 profit to Rochester?

The purchase price of $14 million for the former State hospital in Rochester, Minnesota was based on compliance with market value appraisal procedures promulgated by the Land and Natural Resources Division, Department of Justice. The following stipulation is included within these procedural guidelines regarding the amount to be offerred ".... in no event shall such amount be less than the agency's approved appraisal of the fair market value of such property." The Federal appraisal compares favorably with the county's hired appraisal of $18 million as a fair market value. Federal costs to construct a comparable new facility would far exceed the amount of the Federal investment in the Rochester facility.

What is the estimated annual payroll expected to be when this facility is operational, and what is the estimated total annual economic benefit to Rochester of this facility?

The estimated annual payroll when the Rochester facility is operational will be approximately $8 million; total outlays are estimated at about $14.3 million.

Warden Transfers

Since January 1, 1983 how many Federal Prison System Wardens and Superintendents have been moved to another location within 2 years of their retirement from the system?

Of the 24 Warden/Superintendent transfers since January 1, 1983, no one has retired. Two are eligible to retire within two years.

In how many cases is the last duty station of those reported in the preceding question the home area or the retirement address of the person moved?

One individual was transferred to a facility in his home State.

Prisoner Production of Highway Signs

During the Senate's consideration of the 1984 appropriation bill, Senator Humphrey obtained an amendment that removed the limitation on the use of materials produced by prison labor in construction of Federal-aid highways. This action removed a limitation that had been incorporated in the Surface Transportation Act of 1982.

The American Traffic Services Association and the American Road and Transportation Builders Associated, and others, have protested to me that this will have a serious, detrimental effect on the sign-manufacturing industry. I indicated to them that it was not our intention to take work away from small business, but, at the same time, I believed in providing opportunities to offenders in hopes of reducing recidivism. I also promised to test the overall impact of the Humphrey Amendment to see if the costs outweigh the benefits.

I would appreciate your supplying for the record the views of the Administration, including the SBA Advocate for Small Business, and particularly the Federal Highway Administration with regard to allowing prisoners to make highway signs.

Signs manufactured by Federal Prison Industries are and have been for years sold only to Federal agencies which have the responsibility for signs on Federal property, such as the U.S. Park Service. These signs are not "highway signs" used on Federal-aid highways. Therefore, FPI's sign business was not affected by the Surface Transportation Act of 1982. Similarly, no impact is expected from the Humphrey Amendment.

State prison sign industries were adversely affected by the Surface Transportation Act. Senator Humphrey's Amendment restores the opportunities for State prison industries to participate in this market. The Department of Justice supports the amendment for this reason.

The Bureau of Prisons has requested the Small Business Administration and the Federal Highway Administration to provide the Subcommittee with their views regarding prisoner production of highway signs.

UNICOR Employment

Earlier this year I received an allegation that Federal Prison Industries (UNICOR) was employing a greater portion of alien than American citizen prisoners. At my request, Mr. Carlson prepared the following report that shows this allegation to be false. As of February 13, 1984, the Federal prison population, excluding Atlanta which is devoted to detained Cubans, was 86.9% U.S. citizen and

86.6% of the UNICOR jobs were occupied by U.S. citizen prisoners. That is a fine record and by publishing this report I hope the allegation will be put to rest.

(The report follows:)

U.S. Department of Justice

Federal Prison System

Washington, D.C. 20534

FEB 29 1984

Honorable Ernest F. Hollings
United States Senate
Washington, D. C. 20510

February 24, 1984

Dear Senator Hollings:

Thank you for your letter dated February 2, 1984 in which you request information regarding employment opportunities in Federal Prison Industries (UNICOR) for United States citizen and alien inmates.

Specifically, you requested this information on a facility-by-facility basis as well as overall totals for the Federal Prison System. The requested information is attached.

I would like to bring several items of information to your attention which may assist you in evaluating this data.

1) The "total" number of jobs available in Federal Prison Industries varies from time to time depending upon inmate population levels, factory capacity and production demands.

2) The United States Penitentiary in Atlanta, Georgia has as its primary mission the detention of over 1,000 Cuban Nationals. This accounts for the high percentage (83%) of aliens working in industries at that institution. The attached chart illustrates the significant impact when Atlanta is excluded from the overall figures. When Atlanta is included, aliens comprise 16% of the Bureau's total population and 18% of the inmates working in Federal Prison Industries. When Atlanta is excluded, aliens comprise 13.1% of the Bureau's total population and 13.4% of the inmates working in Federal Prison Industries.

If we can be of further assistance in this matter, please contact my office at your convenience.

Sincerely,

Norman A. Carlson

NORMAN A. CARLSON
Director

Enclosure

BUREAU OF PRISONS
FEDERAL PRISON INDUSTRIES EMPLOYMENT
U.S. CITIZEN AND ALIEN INMATES
AS OF FEBRUARY 13, 1984

INSTITUTIONS	TOTAL POPULATION	TOTAL U.S. CITIZENS	% U.S. CITIZENS	TOTAL ALIENS	% ALIENS	TOTAL FPI INMATES	TOTAL U.S. CITIZENS IN FPI	% U.S. CITIZENS IN FPI	TOTAL ALIENS IN FPI	% ALIE IN F
ALDERSON	588	504	86%	85	14%	248	202	81%	46	19%
ALLENWOOD	541	517	96%	24	4%	209	204	98%	5	2%
ASHLAND	712	607	85%	105	15%	162	138	85%	24	15%
* ATLANTA	1560	429	28%	1131	72%	677	79	12%	598	88%
BASTROP	606	461	76%	145	24%	66	62	94%	4	6%
BIG SPRING	341	330	97%	11	3%	182	172	95%	10	5%
BORON	265	244	92%	21	8%	48	44	92%	4	8%
BUTNER	229	225	98%	4	2%	115	111	97%	4	3%
CHICAGO	381	373	98%	8	2%	26	25	96%	1	4%
DANBURY	875	793	91%	82	9%	342	260	76%	82	24%
DULUTH	89	87	98%	2	2%	31	30	97%	1	3%
ELGIN	704	627	89%	77	11%	0	0	0%	0	0%
EL RENO	1370	1163	85%	207	15%	374	329	88%	45	12%
ENGLEWOOD	365	342	94%	23	6%	86	83	97%	3	3%
FORT WORTH	728	703	97%	25	3%	251	240	96%	11	4%
LA TUNA	701	499	71%	202	29%	232	114	49%	118	51%
LEAVENWORTH	1372	1230	90%	142	10%	639	569	89%	70	11%
LEWISBURG	1288	1254	97%	34	3%	422	405	96%	17	4%
LEXINGTON	1233	1160	94%	73	6%	314	298	95%	16	5%
LOMPOC	1600	1478	92%	122	8%	467	443	95%	24	5%
MARION	468	468	100%	0	0%	0	0	0%	0	0%
MEMPHIS	632	574	91%	58	9%	203	185	91%	18	9%
MIAMI	652	488	75%	164	25%	95	18	19%	77	81%
MILAN	888	794	90%	94	10%	199	175	88%	23	12%
MONTGOMERY	362	355	98%	7	2%	0	0	0%	0	0%
MORGANTOWN	284	281	99%	3	1%	64	63	98%	1	2%
NEW YORK	711	515	72%	196	28%	36	20	56%	16	4%
OTISVILLE	631	578	92%	53	8%	126	121	96%	5	4%
OXFORD	649	615	95%	34	5%	296	276	93%	20	7%
PETERSBURG	476	457	96%	19	4%	123	119	97%	4	3%
PLEASANTON	455	403	89%	52	11%	149	136	91%	13	9%
RAY BROOK	784	616	81%	168	19%	317	251	79%	66	21%
SAFFORD	218	209	96%	9	4%	92	87	95%	5	5%
SAN DIEGO	674	270	40%	404	60%	33	28	85%	5	15%
SANDSTONE	636	526	83%	110	17%	260	207	80%	53	20%
SEAGOVILLE	524	393	75%	131	25%	106	75	71%	31	29%
SPRINGFIELD	1030	910	88%	120	12%	0	0	0%	0	0%
TALLADEGA	738	667	90%	71	10%	228	212	93%	16	7%
TALLAHASSEE	791	695	88%	96	12%	141	109	77%	32	23%
TERMINAL ISLAND	809	639	79%	170	21%	180	139	77%	41	23%
TERRE HAUTE	1283	1222	95%	61	5%	442	420	95%	22	5%
TEXARKANA	806	630	78%	176	22%	227	163	72%	64	28%
TUCSON	269	167	62%	102	38%	26	14	54%	12	46%
TOTALS	30507	25606	84%	4901	16%	8033	6626	82%	1407	18%

* Atlanta's primary mission is the detention of Cuban Nationals. If Atlanta is excluded from this listing, the figure would be:

TOTALS	28947	25177	86.9%	3770	13.1%	7356	6547	86.6%	1009	13.4%

Office of Justice Assistance, Research and Statistics

Juvenile Justice

Once again the Reagan Administration has requested no funding for juvenile justice and delinquency prevention. Meanwhile, the Office of Juvenile Justice and Delinquency Prevention approved $798,531 for a two-year study to determine whether Playboy, Hustler and other more sexually explicit materials are linked to violence by juveniles.

When this study was first proposed, OJJDP's Director of research, evaluation and program development reportedly commented that the "project can be accomplished in a much shorter time period, and at a considerably reduced cost to the Federal Government." The research director noted that similar reviews are conducted in 6 to 9 months for a range of $20,000 to $40,000, and that $60,000 would be sufficient for this proposal. Mr. Regnery has said that those comments were based on a preliminary grant proposal that later was rewritten. What occurred in the rewritten proposal that compelled OJJDP to make a grant of almost $800,000 for a study that the Office's research director concluded that $60,000 would be sufficient?

The Research and Program Development Division Director testified at the House hearing on reauthorization of the juvnile justice program that after discussion with Dr. Judith Reisman at American University, and a detailed review of the application, her understanding of the scope of the project was found to be much broader than originally envisioned.

OJARS has written to our staff that it "is longstanding agency policy to promote maximum open competition" for research grants. In view of the OJJDP's research director's comments, would not competitive bidding have determined whether it was necessary to spend $798,531 on this study?

The government awards contracts to purchase specific products or services. Competition is generally used to identify the lowest possible price for that particular product or service. In contrast, the purpose of a grant or cooperative agreement is to stimulate and support the grantee's activities in a particular program area, in this case study, the relationship between pornography, exploitation and delinquency. Grant costs are judged in terms of whether they are reasonable and necessary to conduct the particular project. Therefore, cost comparisons are not as relevant for either "sole source" or competitive grant awards. Rather, the focus in the case of a grant is on determining whether the proposal costs are reasonable and necessary to advancing the state of knowledge in terms of the activities proposed in each application.

We believe that the American University application is cost effective because of the expertise of the project director and because she will be able to build on her prior work. Dr. Reisman has extensive experience both in using the media to communicate and in studying the effects of the media on attitudes and behavior.

Furthermore she has already collected a considerable amount of the material that will be necessary to conduct the project.

Criminal Justice Assistance

In enacting the FY 1984 appropriation, Congress provided $64,800,000 for Criminal Justice Assistance, to be available only upon enactment of authorizing legislation. A similar amount is requested for FY 1985. The authorizing legislation still has not been enacted.

In your statement, you indicate the intention of the Department to "work with the Committee to see if some accommodation can be reached so that both the 1984 and the proposed 1985 Justice Assistance programs can be moved forward." Is the Department suggesting to the Committee elimination of the requirement that authorizing legislation be enacted before the funds are available or what is the "accommodation" sought?

We have already begun to work with the Committees of Congress to see if some accommodations can be reached on the types of criminal justice assistance that should be provided. In a May 15, 1984, letter to the Chairman of the Senate Judiciary Committee, the Department provided a draft amendment in the nature of as substitute for H.R. 2175. This bill would:

1. Revise the organizational structure of the Office of Justice Assistance to conform with the structure contained in S.1762.

2. Reauthorize the juvenile justice program at the $70,000,000 level.

3. Provide for a missing children's program within the juvenile justice authorization limited to $10,000,000.

4. Continue existing programs of the National Institute of Justice and the Bureau of Justice Statistics.

5. Continue the public safety officers' benefits program.

6. Establish a Bureau of Justice Programs within the Office of Justice Assistance to administer a grant program for State and local assistance that would include block and discretionary grants to support specific types of projects outlined in the legislation.

Except for the juvenile justice and missing children's initiatives, the proposals are very similar to the legislative proposals already passed by the House as H.R. 2175. It is this package which we refer to as the accommodation.

Since the Juvenile Justice and Delinquency Prevention Act will expire at the end of FY 1984 and other existing programs are dependent upon the appropriation process for their continuation, we are most anxious that the Congress quickly enact the necessary authorizing legislation. For the Bureau of Justice Programs we are even more anxious to get legislation quickly enacted because we are totally unable to start these programs until the restrictions in the 1984 Appropriation Act are lifted.

If the Congress fails to enact the necessary authorization language before FY 1985 begins, the Department, of course, is interested in maintaining its ongoing programs by whatever method the Congress may choose.

The Department of Justice has submitted a total of $72,930,000 in supplemental appropriation requests for FY 1984. What would the Department think of using the $64,800,000 to offset the bulk of those supplemental requirements?

Because the authorization and appropriation processes are not closely tied together, we do not think that it would be wise to use the $64,800,000 currently reserved in the appropriation to offset supplemental appropriation requirements. The approach taken by the House to keep the 1984 amounts in reserve and provide only a small amount in 1985 is preferable to waiting for the appropriation process. Because we are precariously close to the end of this budget cycle, we believe that we should take advantage of the automatic availability provision that Congress included in the 1984 Appropriation Act rather than see those funds be diverted for other purposes and await the uncertainties of a new budget cycle.

QUESTIONS SUBMITTED BY SENATOR DECONCINI

Customs Primary Border Consolidation

As you know, I have proposed a compromise to the Administration border consolidation plan. My plan calls for Customs doing primary inspections at the airports and seaports, as proposed by the Administration, and the land borders staying as they are. There would be no loss of personnel to either Customs or INS. A two-year study, by a panel of experts on land border issues, would give the Committee an objective assessment of the ability of Customs or INS to handle primary inspection and drug interdiction at the land borders. Also, during this two-year period INS would receive extensive, specialized drug enforcement training and Customs, immigration training. I would abide by the study findings and introduce legislation to implement their recommendations.

Frankly, I believe that my compromise meets all of the Administration's objectives and those of the Congress.

Why isn't this compromise plan a good beginning to border consolidation? It gives the Administration two-thirds of what it wants, at no cost, and probably would not require extensive legislation.

Nearly 88 percent of all travellers to the United States enter through land border ports of entry. The greatest benefit to the public that consolidation will provide, therefore, is found at land border ports of entry, not airports and seaports. The compromise plan, as a result, falls far short of the Administration's objectives because it fails to address the primary benefit to be derived. Moreover, since the issue of consolidation has been studied and restudied for many years already, it would not be prudent to continue to delay the merger, especially when agreement between the agencies has been attained and there is a great deal of public sector support for the plan as proposed.

In addition, the proposed compromise to the Administration's consolidation plan was studied last year by INS and evaluated as not suitable from four perspectives: INS management, immigration enforcement, cost advantage, and policy administration. Moreover, because of its' obvious tilt toward Customs, a rationale which was never born out by the Administration study, this option was rejected by the Cabinet Council on Management and Administration and continues to be unacceptable to the Administration. The following is a summary evaluation (Option No. 4 on the attached table) which would place airport accountability into a single agency, but would deal with only 10 percent of volume.

PROS:

- Places accountability for airport inspections into one agency.
- Leaves working system (land border ports) intact.
- Addresses concerns of the most visible groups pressing for consolidation of the inspection process.

CONS:

- Does not resolve overall issue, deals with only 10 percent of the traffic volume (negates potential savings in other 90 percent).
- Adds staff (loss of downtime utilization, increased INS secondary).
- May adversely affect industry-supported facilitation efforts such as visa waiver, expansion of pre-clearance, etc. Customs has not been in favor of these; INS has.
- Perpetuates land border staffing imbalance.
- Further fragments the inspection function.
- Since more than half of air travelers are aliens, places increased authority over aliens in the wrong agency.

Resource Consequences: Requires the addition of 165 FTE to INS at an annual cost of $6.6 million.

. Transfer 431 FTE from INS to Customs	...
. Add 74 FTE to INS airport secondary	+$2.8 million
. Add 91 FTE to INS Adjudications capacity	+3.8 million
TOTAL	6.6 million

The following table displays our assessment of the various consolidation options.

EXHIBIT III-A
EVALUATION OF
CONSOLIDATION OPTIONS
AGAINST CRITERIA

OPTIONS	OVERALL EVALUATION	CRITERIA						COMMENTS
		MANAGEMENT	FACILITATION	IMMIGRATION ENFORCEMENT	PUBLIC PERCEPTIONS	COST ADVANTAGE	POLICY/ ADMINISTRATION	
1. STATUS QUO								
A. "LEAVE AS IS"	Ⓓ	No	No	Barely	No	No	No	System does operate in field despite management/accountability issues (no cost savings).
B. ADDRESS STAFFING IMBALANCE	Ⓒ	No	Barely	Barely	No	No	No	Prospects for 50/50 staffing barely improved. Possible $2.8M savings thru increased adjudications capability
2. CONSOLIDATE PRIMARY IN CUSTOMS	Ⓒ	Fully	Moderately	No	No	No	No	Places immigration inspection into inappropriate agency; but does assign accountability for the function. Adds $16.9M for necessary enhanced secondary and loss of adjudications capability.
3. CONSOLIDATE PRIMARY IN INS	Ⓐ	Fully	Fully	Fully	Fully	Fully	Fully	Emphasizes control over legal entry into U.S., assigns accountability for the function. Saves $11.2M in F Y 84, $7.0M-$7.6M in F Y '85
4. CONSOLIDATE AIRPORT PRIMARY IN CUSTOMS, STATUS QUO ELSEWHERE	Ⓒ	No	Barely	No	Substantially	No	No	Deals with only 10% of volume, fails to address major immigration policy, management and accountability issues, however, responds to highly visible segment of traveling public. Added cost of $6.6M.
5. CONSOLIDATE LAND PORT PRIMARY IN INS, STATUS QUO ELSEWHERE	Ⓑ	Substantially	Substantially	Substantially	Substantially	Substantially	Substantially	Deals with 60% volume, including pressure packed Southern border, places responsibility for dealing with growing pressure on Northern border, not responsive to intensive air travel issues. Saves $4.9M.
6. "PEOPLE VS CARGO" - INCLUDING SECONDARY	Ⓐ	Fully	Fully	Fully	Fully	Fully	Fully	Emphasizes control over legal entry into U.S. Answers all criteria issues. Saves $20.5M.
7. ALIENS VS CITIZENS	Ⓓ	No	No	No	No	No	No	Not a meaningful or operative option.
8. TEST	Ⓒ	No	?	?	No	?	?	Permits innovation/experimentation on controlled basis; however, delays solutions and has not worked previously

EVALUATION CRITERIA

Ⓐ Meets all evaluation criteria in all or most respects
Ⓑ Substantially meets most criteria
Ⓒ Meets some criteria in some respects
Ⓓ Not responsive to criteria

McNamar Letter to OMB

Mr. Smith, no one can convince me that this border consolidation plan represents a consensus of the various law enforcement minds of the Administration. By every piece of evidence I have been able to gather over the past seven months, this plan was a hybrid plan designed to placate INS and you in the face of overwhelming support for putting primary inspection into the Customs Service. Let's be honest about this and lay things on the table. The Administration on more than one occasion has formally proposed that all primary inspection be put into the Customs Service, the latest being during preparation of the FY 1983 budget. Estimates are that putting it all in Customs would save $27 million while only $6 million would be saved if it were put all in INS. The current plan will save no money, and will cost considerable dollars for training of INS to handle drugs and Customs to handle immigration documentation. Deputy Secretary Tim McNamar put it best in a letter to OMB Deputy Director Joe Wright when he talked about the Administration plan: "The Administration would be subject to ridicule by Congress for solving problems of fragmentation, duplication, and lack of accountability by further splintering of border responsibilities."

Can you tell us how in the world the Administration arrived at the present, fragmented law as a solution to the already fragmented border inspection situation?

There have been roughly 17 attempts over the past 30 years to merge INS and Customs inspections functions. This most recent effort, coordinated by OMB, was studied for over a year by both agencies, each with experts in the Federal inspections process. Both agree that the plan is workable and cost-effective. The present plan is supported fully by the President's Private Sector Study on Cost Control (Grace Commission Report), the Joint Industry Group, and a wide variety of other public and private groups. We emphatically believe that the entire Federal inspection function should not be removed from the Department of Justice, which is the Nation's primary law enforcement agency. Within the Justice Department we have the lead responsibility for drug enforcement. We have always been concerned with the entry and exit of fugitives from the country and we have the lead responsibility for Federal prosecution and, ultimately detention and incarceration. There is no viable reason to remove totally the Inspections link from the broader chain of border enforcement efforts conducted under the auspices of the Justice Department. The current proposal contains a division of responsibility that is cost-effective and maintains a sufficient level of responsibility and control within each agency.

In response to requests from the public and private sectors to improve the inspections process, Congress asked OMB to coordinate and take the lead in developing an inspection consolidation plan. Specific language mandating OMB to take this action is included in the House Appropriations Committee report on supplemental appropriations for 1983 (dated May 17, 1983), the House Appropriations Committee Appropriations Bill for 1984 (dated May 25, 1983) and the Senate Appropriations Committee report for 1984 (dated August 2, 1983). It was in response to this directive from the Congress that several means of handling the issue were developed and the Cabinet Council on Management and Administration (CCMA) made its decision. The option chosen represents a middle-ground position.

Under this option agencies involved in the Federal inspections process can jointly ensure proper cross-training and monitoring of workload and performance, so that statistical enforcement measurements for each agency do not decline as a result of this change.

This option represents a viable means to resolve interagency conflict while maintaining a workable, cost-effective method of performing the inspections function. From a resource perspective, we believe that economies of scale and resulting cost savings can be achieved by implementing this plan because it eliminates some of the currently existing duplication of resources and streamlines operations.

It should be noted that, while you have stated that a $27 million savings would occur if primary inspection was placed into Customs, INS has shown that a $28.5 million savings would occur if placed into INS. These arguments and counter-arguments have persisted for years and resolve nothing. However, there is no argument by either agency, under the present consolidation plan, that a savings will occur. Taking positive action to merge these activities has therefore become an overriding concern of the Administration. Otherwise, inaction will go on indefinitely. Our evaluation of option No. 6 on the previously attached table follows.

This option establishes accountability by function, allowing INS and Customs to carry out primary missions: INS - immigration control; Customs - revenue collection.

PROS:

- Places responsibility for people processing in a single agency:
  - allows one agency to develop innovative approaches to people inspection
  - allows carriers to deal with one entity
  - eliminates duplicative management and support staff
- Increases immigration enforcement:
  - concentrates efforts of highly trained officers on primary line
  - creates border management concept in conjunction with INS Border Patrol
  - allows for the development of fraud profiles and computerized lookout system
- Promotes incorporation of law enforcement functions under Justice:
  - drug interdiction
  - smuggling
- Promotes continuum theory:
  - initial contact with a person may evolve into processing under other divisions within U.S.
  - allows Customs to concentrate efforts on financially lucrative cargo processing

CONS:

- Eliminates Customs presence at inspections points
- Requires transfer of authority for revenue collection to INS

Resource Consequences: Saves $28.5 million annually while establishing single agency for border control.

. Transfer 1,400 positions from Customs to INS passenger inspection	...
. Reduce combined staffing needs by 563 FTE	-$21.9 million
. Cancel 158 Adjudications FTE	-6.6 million
TOTAL	-28.5 million

INS-Customs Primary Border Consolidation

As Commissioner Nelson knows, perhaps my major concern over the proposed border consolidation plan is that it will have a negative impact on drug trafficking enforcement at the land borders. Although INS people get some narcotics training, they are primarily immigration enforcement officers--not drug or contraband inspectors. Customs has decades of experience and specialized training in drug interdiction. Officials within the Administration have expressed private concerns about the plan's negative effect on drug enforcement and I understand that few, if any, of the major drug enforcement agencies were involved in putting this plan together.

Why should Congress approve your plan to turn over drug enforcement to INS--an agency that admittedly has a primary immigration mission and a secondary drug enforcement role to play?

Although it is true that the Immigration Inspector "specializes" in immigration law, we are convinced for several reasons that efforts at drug enforcement can equal if not exceed those performed at present. First, for years, most Immigration Inspectors have been cross-designated Customs Inspectors, and have made frequent and impressive drug "busts", both on their own and as referrals to U.S. Customs secondary inspection areas.

Second, the relatively high quality of Immigration Inspectors indicates that their capabilities in drug interdiction are already very good, not to mention the possibilities after increased training. For example, when U.S. Immigration took over the duties of the U.S. Customs Service at the Canadian border port of Point Roberts, the number of narcotics seizures increased sixfold.

INS has already drafted a quality control plan that includes self-monitoring in the performance of drug interception work, and we anticipate improved coordination in the intelligence area because DEA also answers to the Attorney General, thus avoiding the present conflict and duplication of effort between agencies which fall under different cabinet-level departments.

Finally, it should be noted that any potential reduction in drug interdiction will be alleviated by the nature of the merger plan itself since it retains a U.S. Customs secondary presence at all ports of entry. Since the majority of drugs are presently discovered in the Customs secondary area, very little expertise is lost in this plan. In fact, it is very likely that the force of new Immigration Inspectors for primary inspection will be mainly comprised of former Customs Inspectors, thereby retaining the bulk of experience and specialized training. It is also noteworthy that U.S. Customs has consistently reported that the bulk of drugs (e.g., 97 percent marijuana, 99 percent cocaine, 75 percent heroin) enter the U.S. by air and sea, not through land border ports. Since the plan retains U.S. Customs at air and sea ports, it is further evident that drug control will not be affected to any great extent, if at all.

Loss of Positions in Customs

Another major reason why I oppose the Administration's consolidation plan is because Customs will loose a net of 282 inspector and patrol positions to INS. I understand that INS sought to grab another 200-300 positions from Customs but was thwarted by OMB. In any event, any loss of Customs personnel at a time when they already have lost 400 in FY 1984, and are due to loose another 923 next year, is unacceptable to me and other Senators concerned about law enforcement. I am especially concerned that if this plan goes forward, Customs' air interdiction, marine program, and Operation Exodus programs will be devastated.

In view of your FY 1985 budget that calls for 1,000 new positions at INS. Why does INS need any additional slots from Customs to make this plan work?

The loss of Customs Inspector positions and its impact on the Customs Service is a separate issue that should be addressed to and answered by the Customs Service.

None of the positions to be gained by INS in FY 1985 are Immigration Inspector positions. The bulk of these new positions are Border Patrol Agents, and were requested primarily because of the well-known influx of illegal aliens between ports of entry and the corresponding urgent need for enforcement resources to bolster a badly understaffed patrol workforce.

Consolidation, however, concerns the merger of primary inspection activities at ports of entry, not between them. Since nearly 50 percent of all primary inspections at ports of entry are presently conducted by U.S. Customs Officers, INS will require at least an equal number of Customs workyears presently devoted to this effort. It should be noted that the "additional" slots do not represent an enhancement at all. Instead, they are included as a necessary part of the consolidation plan to replace U.S. Customs' effort on primary inspection.

New Facilities in Arizona

I am informed that due to your shortfall in actual hiring this year, INS may be contemplating spending some of their surplus salaries and expenses money to replace Border Patrol facilities that are worn out.

A document prepared at the request of the Subcommittee staff in this regard shows that INS plans to replace the Douglas, Arizona; Naco, Arizona; and Ajo, Arizona Border Patrol Stations and facilities.

Can you tell me a bit more about your plans to either refurbish or replace these three important Arizona Border Patrol Stations, and what your construction timetable might be?

In anticipation of projected appropriations for FY 1985, the Facilities and Engineering Branch has started actions to prepare plans for three new Border Patrol stations; namely Ajo, Najo, and Douglas, all in the State of Arizona. These new stations will replace the old ones, which are inadequate to meet the present and projected requirements. The project architect assigned to these stations has conducted meetings with the field and Central Office Border Patrol Staff. General agreement has been reached regarding the operational space requirements, and a draft has been prepared covering the Scope of Work and design criteria which reflects the Border Patrol space requirments for administrative areas, alien processing areas, storage and parking. Furthermore, public notices for purchase of land for the three stations have been prepared and issued.

When funds are appropriated we will be ready for action. Basically, each project will proceed in accordance with the following schedule:

1. Advertisting for Architect/Engineer services and award of A/E service contract.	60-90 days
2. Preparation of design and construction documents.	180 days
3. Advertising of construction bids and awards of construction contracts.	60-90 days
4. Construction of the Border Patrol stations and associated facilities.	300-360 days

Multi-State Intelligence Projects

Mr. Smith, for the second year in a row your budget does not include any funding for continuation of the regional information sharing systems, including the multi-state intelligence projects around the country. Congress provided $9.9 million last year over Administration objections, and I intend to recommend the same funding level this year to keep these important regional intelligence programs going in FY 1985.

I am informed that the General Accounting Office, in a report to Chairman Laxalt, gave these intelligence centers a clean bill of health and now supports the program.

In light of this favorable report and the strong support for these projects among members of this Committee, why do you continue to resist funding these important intelligence assets?

The Regional Information Sharing Systems, were established with funding from the Law Enforcement Assistance Administration (LEAA) in 1975 as a mechanism to compile and exchange interstate data on high mobile criminals. This was consistent with LEAA's mission to encourage innovative law enforcement programs within State and local governments. The LEAA funding was based on a "seed money" concept whereby State and local governments would decide, after an initial period of Federal funding, if the projects merited continuation and make the necessary arrangements to provide permanent financial support from State and local resources.

The Department of Justice supports the concept of State and local governments exchanging intelligence information for the purpose of enhancing their own law enforcement efforts. However, due to its multi-state nature, this program is unlike similar pilot LEAA projects in which the program costs were assumed by State and local governments. These projects do not have direct financial support by the agencies being served. The Department's position on these projects is that they should be managed and funded as instruments of State and local governments and that the existing Federal grant mechanism does not provide adequate oversight.

Within the past year, a review team from the Department's Intelligence System Policy Review Board visited each of the projects to assess their compliance with recommendations made by earlier audit reports. The review team found that significant improvements have been made by all of the projects in the management and control of information and intelligence sharing. Nevertheless, in the Department's view, the $45,000,000 in Federal funds already provided for the Regional Information Sharing Systems exceeds the value of any benefits derived by law enforcement in general. Thus, the Department takes the position that the operating costs of the Regional Information Sharing Systems should be financed by the participating jurisdictions and that no Federal funds should be appropriated for this activity in FY 1985.

Drug Threat Swinging Back to the Southwest

Mr. Smith, press reports back in my State of Arizona indicate that Tucson and other Southern Arizona border cities are seeing a growing rise in drug trafficking. Indicators are that the pressure in South Florida has once again forced the drug smugglers back to the southwest where it is perceived the resources to combat suggling are less concentrated.

Can you corroborate the level of the drug threat to the State of Arizona and the southwest over the past six months and tell us what types of drugs are flowing across the Southwest Border?

The situation along the Southwest Border has not changed significantly since the Special Agent in Charge of our Phoenix Division testified before your committee on September 10, 1983. With regard to the State of Arizona, because of its geographic location, it continues to be an area through which drugs pass destined for other parts of the United States. Currently, it is not a major transshipment point or distribution center, but is a consumer State.

Heroin

Mexican heroin supplies have increased over the past one and one-half years, and Arizona has been used as a conduit for trafficking organizations whose ultimate destinations are the Mid-West and West Coast.

Cocaine

Cocaine is readily available in Arizona. It is transported from the major entry points of Florida and California by various methods. DEA, in cooperation with the New Mexico State Police, has been conducting an operation against traffickers transporting cocaine by automobile from Florida to the Southwest and West Coast. Information from this very successful operation regarding Arizona has been passed to the DEA Phoenix Division for action. There have been recent increases in instances of cocaine being smuggled across the Mexican border. This situation is being monitored closely.

Marijuana

All varieties of marijuana continue to be readily available in Arizona. The most common varieties seized at the U.S./Mexican border are the tops of plants and high quality marijuana from Colombia. The plant tops compete with domestic sinsemilla, which is also available in Arizona. Large propane tanker trucks are being used to transport Mexican marijuana across the border.

Dangerous Drugs

During 1983, there has been a substantial influx of methaphetamine traffickers from California. Due to the strict precursor chemical reporting requirements in California these traffickers are purchasing chemicals in Arizona which currently has no such statute. The DEA Phoenix Division is monitoring these purchases in cooperation with California law enforcement officials. Arizona is currently drafting similar legislation. The diversion of pharmaceutical stimulants from Mexico into Arizona continues to fill the increasing demand for stimulants in the Southwestern U.S.

Phoenix Prison Status Report

Your FY 1985 budget calls for 361 positions and $12,191,000 to activate the Phoenix, Arizona Federal Correctional Institution and open several housing units next year.

Could you break out the resources going to the Phoenix prison and give us a progress report on the Phoenix, Arizona prison?

The salaries and expenses budget for the Federal Correctional Institution in Phoenix, Arizona includes $7,422,000 and 215 full-time positions for the activation and operation of the facility during FY 1985.

The facility is under construction and approximately 35 percent complete. Site utilities are complete and work is progressing on the buildings. Construction is scheduled to be complete in May 1985.

DEA Staffing Increase in FY 1985

Mr. Smith, your staffing increase for DEA in FY 1985 is somewhat misleading. On paper it looks as though you are increasing DEA staffing by 355 positions and resources by 15 percent. But actually all you are doing is transferring 333 existing Organized Crime Drug Enforcement Task Force slots--already occupied by DEA people--into the DEA account. In reality, DEA in only getting 18 new positions next year.

In light of the Committee's expressions of concern regarding your intelligence-gathering weaknesses and other problems, is a staff increase of 18 people really going to improve DEA's work product next year? Isn't this really somewhat of a retreat on the part of the Administration in its "war on drugs?"

We appreciate the Committee's interest in our efforts and the guidance that it has provided in the past. To fully respond to your question we need to review past resource allocations that resulted in the FY 1985 overall increase of 18 positions.

In 1984, DEA was appropriated resources for immediate needs--foreign operations, laboratory operations, ADP operations, and the South Florida Task Force. During 1983, despite the fact that DEA's filled positions increased by almost 500, there were vacancies at the end of the year. Therefore, there will be workyear increases in 1984 from filling the vacancies in the base staffing, and in 1985 from the annualization of the 1984 program increases. In fact, the 1985 budget is 485 positions greater than it was at the beginning of 1983. This, combined with the more effective use of our personnel, and the many interagency efforts in which we participate will provide continued progress in the "war on drugs".

Drug Trafficking Problem on Hawaiian Islands

Senator Inouye and I have joined forces to begin developing a strategy for addressing the drug trafficking problem that is growing on the Hawaiian Islands. We have gathered data from your Department and other law enforcement agencies regarding the drug threat on the Islands, and it appears that Hawaii is rapidly becoming a major drug transshipment point in the Pacific, besides becoming number one in domestic marijuana cultivation.

Senator Inouye and I have come up with three possible initiatives which might help focus more attention on the drug problem in Hawaii:

1. *Establishment of a South Florida-type task force on the Islands, involving DEA, Customs, Bureau of Alcohol, Tobacco and Firearms, Coast Guard, and the other major law enforcement agencies.*

2. *Resurrection of the DEA State and Local Task Forces and other informal DEA task forces to combat smuggling in the Islands.*

3. *Establishment of a set-aside fund in the National Guard budget which would be used by States to offset the cost of State-*

requested National Guard drug enforcement activities in Hawaii and other States around the country.

What is your reaction to these recommendations and would your agencies be willing to take the lead in the two task force recommendation?

Recommendation #1

Prior to the establishment of the Vice President's South Florida Task Force, seizures, arrests, aircraft sightings and other intelligence indicators pointed to that area as a major importation area for cocaine and marijuana, which was later distributed throughout the United States. The situation was so serious that a major coordinated Federal effort was necessary. The expending of millions of Federal dollars is justified when an area is posing a serious threat not only to its own geographic area, but the nation as a whole.

The use of Hawaii as a transshipment point has been established, but not to the extent which merits a major influx of Federal resources such as those in South Florida. A comparison of cocaine seizure statistics will demonstrate this:

Cocaine Seizures in Kilograms

	1981	1982	1983	1984
Hawaii	6.16	3.8	1.26	2.39 (Oct.-Dec.)
Florida	1,303.63	2,848.06	4,452.22	1,031.30 (Oct.-Mar.)

DEA and other Federal Law Enforcement agencies have a very cooperative relationship among themselves and with State and local officials in the State of Hawaii.

It should also be noted that the South Florida model is primarily an interdiction operation, composed of Customs, DEA, and Coast Guard representatives. Their primary mission is to serve as apprehension teams in intensified air and sea interdiction efforts.

The interdictions are generally made on the basis of intelligence regarding the anticipated introduction of smuggled contraband into United States terrorities. At the present time, most of this intelligence is obtained or processed by the El Paso Intelligence Center (EPIC) or the National Narcotics Border Interdiction System (NNBIS). Follow-up investigations resulting from interdiction activities are generally handled by the DEA/Customs Joint Task Group, which works as a unit within the Miami office of DEA.

EPIC and NNBIS are in place in the Hawaii area and are providing all available intelligence to the U.S. Coast Guard, U.S. Customs Service and DEA, to facilitate interdiction. The DEA and other appropriate agencies follow up on successful interdictions as a part of their normal assignments. The net result is that, in fact, this area along with all U.S. border areas are presently being served with a South Florida-type of shared information or intelligence and task force response. The South Florida model is in contrast to the Organized Crime Drug Enforcement Task Forces, which are primarily concerned with the investigation and prosecution of drug related criminal enterprises.

As you are aware, in October 1982, the President and the Attorney General announced the creation of the Organized Crime Drug Task Force (OCDETF). Twelve Task Forces were created on the basis of a nationwide narcotics crime survey conducted by the ninety-four United States Attorneys. Geographic definitions for the twelve Task Force Regions were established and personnel allocations were fitted to each Region's requirements as determined from the nationwide analysis.

The Northwest Task Force, which has San Francisco, California as its core-city, covers the Northern and Eastern Judicial Districts of California and the States of Oregon, Washington, Alaska and Hawaii. Honolulu is the non-core OCDETF city in Hawaii. The Task Force personnel currently assigned there include two Assistant United States Attorneys; three FBI agents, three DEA agents, one IRS agent, one Customs agent and two support personnel. These attorneys and senior investigators are currently working on nine OCDETF cases. Based upon the limited resources available and our experience to date, it is our judgment that the current OCDETF effort in Hawaii is sufficient at this time. However, we will continue to monitor and assess the drug related activities within Hawaii, and make whatever necessary changes in personnel and resources that are needed.

Recommendation #2

DEA currently participates in a fully funded State and Local Task Force located at Honolulu International Airport. Other cooperative efforts with State and local officials have been and continue to be excellent.

Recommendation #3

DEA will contribute $165,000 in Federal funds to the State of Hawaii's FY 1984 marijuana eradication program. This program is a cooperative effort in which the National Guard participates.

The National Guard's primary mission is combat readiness, and any support to the marijuana eradication effort is secondary and based on State priorities. Although the governor of Hawaii has allowed the National Guard to participate in the eradication effort, their primary mission will always take priority. The establishment of a set-aside fund in the National Guard enforcement activities is not within the authority of the Department of Justice. We believe that any such budgetary considerations would be more appropriately directed at the Department of Defense.

Organized Crime Task Force - Hawaii

Perhaps you will want to answer this question for the record in private, but could you tell the Committee what specific organized crime task force activity you have planned for the Hawaiian Islands in FY 1985? As we look more and more into the drug trafficking problem on the Islands, it is becoming clear that organized crime is getting a foothold on the Islands. Can you outline your effort in Hawaii and provide as much detail as possible for the record?

During FY 1985, the Northwest OCDE Task Force will continue its operations in Hawaii. Information on this Task Force's activities in

Hawaii have been described in the preceeding question. At this time, no changes in resources or personnel allocations are contemplated.

Attempt to Take Over Treasury's Glynco, Georgia Training Center

Mr. Smith, we continue to hear rumors that you and your heir-apparent, Mr. Meese, have discussed in some detail, the possibility of trying to take over the Treasury Department's Glynco, Georgia Training Center. As far as I am concerned, the Federal Law Enforcement Training Center (FLETC) should remain in the Treasury Department and there would be great opposition to its takeover by Justice.

Can you put to rest the rumor that Justice is trying to take over FLETC?

Any rumors that the Department of Justice is seeking to take over control of FLETC operations are erroneous. It is certainly true that Justice and Treasury officials have pursued close cooperation efforts under the leadership of this Administration to improve and use fully the range of training services available at the Glynco, Georgia facility. As a specific example, joint funding by our two agencies permitted the establishment of a National Center for State and Local Law Enforcement Training at FLETC. This initiative was highlighted by President Reagan in October 1982, when he announced his comprehensive program to address the problem of organized drug trafficking in this country. We expect our close and harmonious working relationship with Treasury to continue in the future.

QUESTIONS SUBMITTED BY SENATOR CHILES

Proposed INS/Customs Border Consolidation

I have a March 6, 1984 letter, jointly signed by Commissioner von Raab at Customs and Commissioner Nelson at INS, that proposes to let Customs have lead responsibility at seaports and airports and INS at land borders. To accomplish this transfer, INS would receive 622 Customs inspectors and 165 Customs patrol officers. The Customs Service would receive 505 INS inspector positions. In other words, Customs would be the net loser by 282 positions.

When the Customs Service appeared before the Appropriations Committee on March 21, I expressed concern to Commissioner von Raab that since Customs has the drug interdiction experience, it should be kept on the border to help fight the drug war.

Customs currently has approximately 5,900 positions on the land borders and INS has 5,200 positions on the borders. Because Customs has more drug interdiction experience and statutory responsibilities and has more people on the border, it doesn't make a great deal of sense to me to take them off an active border responsibility.

Mr. Nelson, what is you viewpoint on this matter? Can INS, which is concerned with aliens entering the United States, also effectively interdict drugs that cross our borders?

Detection of illegal narcotics is a major function adjunct to the inspection of alien and citizen applicants for admission to the U.S. Over the past few years INS inspectors have initiated seizure action on millions of dollars worth of illicit drugs and other contraband. During FY 1983 alone narcotics detection at land and air ports of entry resulted in the seizure of drugs valued at $28.3 million (includes joint efforts with other agencies). Furthermore, narcotics valued at $27.3 million were seized by the Border Patrol.

INS Narcotics Seizures*

Inspections and Investigations	
Sole Inspections/Investigation Seizures	$1,460,089
Joint with other Agencies	26,794,769
Total	28,254,858
Border Patrol	
Sole Border Patrol Seizures	27,249,567
Joint with Other Agencies	2,114,239
Total	29,363,806
INS as a Whole	
Sole INS Seizures	28,709,656
Joint with Other Agencies	28,909,008
Total	57,618,664

*The value of joint seizures between INS and other agencies increased from $8,784,938 in 1982, to $28,909,008 in 1983.

*The 1983 figures are preliminary and do not represent official statistics.

*The values shown in all INS statistics reflect the valuation supplied to INS by the receiving agency.

Customs/INS cross-training, a major factor in effective control of inspection of both people and goods at the borders, has been performed for many years.

In areas where the Customs Patrol still has a presence along our land borders, the two patrols have established a system of cross-communications and information sharing. The Border Patrol has always been willing to provide support to the Customs Patrol, when asked to do so. Over the past several years, Customs has steadily reduced the number of personnel devoted to this activity, so interaction has become less of an issue.

Our academy staff are already working with the Drug Enforcement Administration's academy staff to establish a program to enhance the training that our Border Patrol agents and inspectors receive.

INS does receive training in drug interception. The Border Patrol agent receives two hours of narcotics identification training and the Customs Patrol agent receives four hours. This is not a dramatic difference, and does not make Customs Patrol agents experts and Border Patrol agents novices.

I have recently questioned other members of the Administration about the proposal endorsed by the Grace Commission which would consolidate the primary inspection and land patrol functions of the INS.

For example, I have expressed concern that nationally the Customs Service would lose personnel under the proposed consolidation. This, of course, is very meaningful to my State where we've been trying to increase Customs manpower and effectiveness for years.

I would like to ask about another concern on mine--and of the people of Florida. That is, the potential effects of this consolidation on Florida's many immigration concerns.

Under the consolidation proposal, it is my understanding that all airport and seaport inspection functions will be manned by the Customs Service.

All land border port of entries will be the responsibility of INS personnel.

Therefore, does this mean that under the consolidation proposal, Florida would no longer have INS enforcement personnel but only administrative staff in district offices?

No. The plan calls for retaining INS secondary presence at all major airport inspection locations at the same level of service as provided in FY 1983. Because there is no land border inspection responsibility, the number of Customs inspector positions will not be reduced.

In fact, the Florida area will see an increase in Customs inspector positions, resulting from the decrease in INS primary inspector positions.

Furthermore, it is anticipated there will be no reduction in the INS committment to the Haitian interdiction effort. We expect continued liaison with U.S. Coast Guard authorities in the Florida area.

Will there only be Customs officials to conduct all inspections at our air and sea ports of entry?

The plan states that the responsibility for primary inspection at all airports and seaports will rest with U.S. Customs Service. This does not mean that INS presence will disappear. At major airport locations, a secondary inspection presence will be maintained by the INS. At smaller air and sea ports of entry, Customs will refer difficult immigration matters to the nearest INS office.

Who will be responsible for enforcing laws against those who smuggle illegal aliens into Florida--will there be any more "Operation Everglades?"

U.S. Immigration will retain this responsibility, just as U.S. Customs will retain responsibility for enforcing laws relating to illicit drug importation. The merger is intended to incorporate a functional shift in primary inspection only, not a shift in law enforcement responsibility.

Who will patrol our southern shores and the Keys where most of the illegal aliens enter?

The consolidation plan is directed at inspection points within the United States, at ports of entry, not in waters off the coast of the United States. There will be no change in the INS mission to coordinate with the U.S. Coast Guard for protecting U.S. waters.

INS Resources in Florida

Mr. Attorney General, you are well aware of the immigration problems of Florida and the burden this has placed on our people. This has also been a great burden for INS personnel in Florida, as you know first hand.

My constituents are very frustrated about the great difficulties they have in getting assistance from the INS offices in Florida--they can't get through on the phone for the simplest of questions or directions, and lines for passports and residency applications are never ending.

So, it is with great dismay that I was recently told that the INS Commissioner has telexed orders to the southern region INS offices to cut personnel.

Specifically, the order dated April 4, instructed INS offices to stop authorized overtime; decrease management support staff (record keepers and information personnel); and impose an immediate hiring freeze.

I am told that requests for exemptions were denied and cuts are now being made.

This greatly disturbs me when I know that this Administration has requested 850 additional Border Patrol staff--most of whom are intended for El Paso and other southwest border points.

We have a mere 67 Border Patrol personnel in Florida - now the administrative INS staff is being cut.

Why can't Florida receive the additional personnel we so desperately need to control one of the major problems in our state?

Because of the continuing massive influx of illegal aliens across the Southern Border, the 850 new Border Patrol positions included in the 1985 budget request were all targeted for the land border sectors.

The Service is well aware of the seriousness of the illegal alien problem in Florida. The Miami Border Patrol Sector is the third most productive sector away from the Mexican Border. Over seventy percent of the deportable aliens apprehended by the Miami Sector entered the United States without inspection across the Southern Border, and by improving control at this border the Service hopes to stop these aliens from traveling to Florida. In addition to improving control of the Mexico/U.S. border, the Border Patrol will conduct task force operations in Florida. This combined approach should alleviate the present problem in Florida. As better control is achieved along the border it should be possible to move more resources into Florida and other interior locations.

Regarding the administrative cut, this is directed toward the regional/central offices; in fact, resources are being redirected to field offices. INS is shifting positions from the regional/central offices to the field offices. We plan personnel reductions through attrition and consolidations which will include transfers of functions. We are putting hiring freezes on the central and regional offices and implementing a field placement program to help transfer central and regional office personnel to the field. The realignment is targeted for completion by December 31, 1984.

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR LAXALT

Border Consolidation

What is the status of the Administration's Border Consolidation plan? Can you briefly outline the details of the plan? What additional resources will you need if the plan goes through?

Over a period of several months various proposals for consolidation of primary inspection functions were prepared and considered by the Administration. At a meeting of the Cabinet Council on Management and Administration (CCMA) on November 2, 1983, a plan for primary inspection consolidation was approved. Subsequently, the plan was approved by the President on January 5, 1984. In general, the proposed plan provides for the following:

- Transfer responsibility for all airport and seaport passenger primary processing to Customs. This transfer will also include responsibility for primary processing at all overseas preclearance airport locations.

- Transfer responsibility for all land border passenger primary processing to INS.

- Transfer responsibility for all patrol functions between land ports to INS.

The plan is being coordinated in consultation with the Congress. If the Administration obtains requested reorganization authority, a reorganization plan will be submitted. If not, the Administration will seek legislation to implement the reorganization. No administrative consolidation will occur in the interim.

It is anticipated that the following inspections workyears and patrol positions will be involved in the transfers:

- 622 Customs Inspector workyears will be transferred to INS
- 165 Customs Patrol Officer positions will be transferred to INS
- 505 Immigration Inspector workyears will be transferred to the Customs Service.

Since consolidation essentially transfers functions and necessary resources between agencies no recurring additional resources are required. There may, however, be a single time need of additional resources to allow for training of newly acquired employees and for uniforms.

Immigration Reform Bill

It looks now as if the Immigration Reform Bill will be debated on the House Floor in early June. If it is enacted and signed into law by the President this summer, will you submit an amended budget to the Congress? How much more do you anticipate you will need in FY 1985?

If the Congress does pass the Immigration Reform Bill, the Administration will submit a budget amendment or a supplemental depending on the status of the FY 1985 budget. Given the uncertainty as to when a bill could be signed by the President and the differences between the House and Senate versions of the legislation, it is difficult to estimate FY 1985 costs. In all likelihood, implementation would take place in FY 1986 and the Administration has already provided comprehensive 5 year cost estimates to the Senate and House Judiciary Committees, including projected welfare expenditures ($5.9 billion, Senate and $11.8 billion, House). (Considering only INS operating costs for the first year, the range could be $110-150 million.)

Border Patrol Enhancement

You have requested major enhancements for the INS, particularly for the Border Patrol. Would you briefly describe the situation along the Southwest Border (how many aliens are attempting to cross the border, how many you are apprehending) and what you hope will be the impact of your enhancements?

The illegal alien situation remains a matter of deep concern. Through April we had apprehended 602,000 illegal entrants on the Southern Border, 9 percent more than last year's record levels. In March we set a new record for apprehensions during a single month - 118,554 - almost 10 percent higher than the previous record. By mid June, the Border Patrol will have made more apprehensions than in all of 1981 or 1982.

There are no generally accepted figures on the number of successful crossers on the border as a whole, however, officers in our Chula Vista Sector report that they are catching 79 percent of the illegal crossers they detect with their new Infrared Scopes. Many of those who evade apprehension at the border are later apprehended at our traffic checkpoints on major arteries leading into the interior. The Census Bureau is using a working estimate of 200,000 for net immigration of illegals per year. This figure subtracts out those who acquire legal status or return to their home country. This figure was based on statistics prior to the 1982 economic crisis in Mexico that so dramatically increased illegal entries, and therefore may be low.

Some say that ten illegal aliens successfully enter for every one caught. This is not true. If it were, 80 million illegals would have entered during the past ten years.

The number of aliens attempting surreptitious entry increased dramatically, beginning in August 1982, as a result of serious deterioration of the Mexican economy. Recently the peso has slipped still further, and two recent increases in the prime lending rate have added substantially to the debt burden faced by Mexico and other Latin American countries. These latest developments may foreshadow even larger increases in the flow of illegal aliens across the border.

The enhanced border enforcement package is the first step towards regaining control of our borders. With these assets, the Border

Patrol believes it can siginficantly reduce the number of surreptitious entries to an acceptable level.

Anti-Smuggling Program

You have also requested enhancements for your anti-smuggling program. Would you please describe the smuggling problem (how many aliens are smuggled into this country, how it is done) and what you hope will be the impact of your enhancements?

What are the penalties for convicted smugglers?

In FY 1983, a total of 86,707 smuggled aliens were apprehended trying to enter the United States illegally. It is estimated that more than 20 percent of illegal aliens are transported or otherwise assisted by professional alien smugglers. In 1983, a total of 14,127 smugglers were apprehended by INS criminal investigators and U.S. Border Patrol agents.

The large majority of aliens are smuggled across the United States southern border by small-scale, independent operations. However, a growing number of smugglers are member of well-structured, sophisticated organizations engaged in this highly profitable criminal enterprise. Several of these organizations that have been uncovered and apprehended by anti-smuggling officers have been found to have smuggled as many as 500 aliens per month and have earned millions of dollars in smuggling fees. Most aliens are brought across the borders by car or truck in small (2-8 person) loads, while on occasion they are transported in larger numbers in vans or tractor trailers. Others are guided on foot around border checkpoint locations, while a small percentage are brought to shore in various types of vessels.

The 13 criminal investigators and 6 clerks that constitute the FY 1985 budget enhancement would be deployed along the known transporting routes, primarily along the Southern border. The additional staffing will enhance the ability of the anti-smuggling program to infiltrate large-scale organizations and thereby yield more and stronger prosecutions. These additional positions represent a projected increase of 1,200 more apprehensions of alien smugglers Servicewide, 700 more cases completed, 600 more convictions on smuggling and related charges, and 1,000 more conveyances seized.

In FY 1983, the average sentence of alien smuggling charges was over nine months of incarceration (16 months for felonies) and over 6,900 smugglers' vehicles were seized with a total estimated value of over $12 million.

Federal Prison System Private Contract Facilities

Recently, FPS entered into a contract with a private firm to run a prison for short-term minimum security immigration law offenders. Would you please describe this contract?

What are the advantages of this contract? The drawbacks?

Do you believe it has application for State and local governments? Do you plan to expand the use of private contract facilities?

The Federal Prison System has withdrawn from negotiations on that particular contract because of strong opposition from local officials. Since this contract facility would have represented our first or "pilot" effort to contract with a private sector company for full custody services, we believe that community support is an important ingredient to success.

Basically, our plans were to contract for the housing of 500 to 600 sentenced, short-term minimum security offenders, principally immigration violators. The principal advantage of the proposal was that we could have promptly placed 500 to 600 minimum security, low-risk offenders in a contract facility, reducing institution-based population and thereby reducing overcrowding in our facilities. We believe that the selective use of private contracts for housing minimum security, low-risk offenders represents one useful alternative for reducing overcrowding in publicly-operated correctional facilities. We do not see any major drawbacks if this alternative is used on an extremely selective basis, utmost attention is placed on the correctional qualifications of the contractor and the operations of the contract facility are closely monitored by Federal Prison System officials.

Organized Crime Drug Enforcement

Two years ago, you requested a special appropriation designed to tackle the growing organized crime drug smuggling problem. That appropriation was focused on a specific issue and cut across agency and departmental boundaries to bring the best resources together to resolve the problem. Now, two years later, you are breaking up the request. Why is this? Did the single appropriation not work? If it did work, why are you discontinuing it now? How can you keep the focus on the problem now that the money is diffused?

The decentralization of financing that is proposed in 1985 for the Organized Crime Drug Enforcement (OCDE) task forces in no way diminishes the Department's commitment to maintain a well coordinated and sustained effort to eliminate organized crime from drug trafficking. Although a single OCDE appropriation has given us the ability to apply resources to respond to the highest priority needs of the participating agencies, the administrative processes associated with a single appropriation tend to be complex. On balance, we must conclude that the mission of the task forces can be most expeditiously conducted with a less complex financial control structure if the initial level of funding can be allocated by each agency with certainty at the beginning of each fiscal year. Two years of experience have established the necessary mechanisms of control within the OCDE program and direct financing will now aid the total law enforcement effort.

OCDE funding was originally requested as a separate appropriation in the Department of Justice for several reasons. It was assumed that a program resting solely on interagency coordination would benefit greatly from central control in its developmental and implementation stages. Because the Attorney General is the chief organized crime/

drug enforcement officer, the OCDE appropriation was placed under his direct control. In addition, reimbursable agreements were set up between the participating agencies and the Associate Attorney General as allottee of the program to ensure that OCDE funds were being spent exclusively for OCDE-related expenses. In sum, it was necessary to establish a fully separate, uniquely identifiable OCDE program; therefore, the Department's policy level requested that--at least in its first two years of operation--one appropriation should be maintained as a separate funding unit within the Department of Justice.

In 1985, under the leadership of the Attorney General, the Justice agencies will continue to operate the Organized Crime Drug Enforcement Task Force program without substantive change in leadership, structure or case control. Each task force will continue to operate under the guidance of an Assistant U.S. Attorney Coordinator, agency coordinators and the OCDE Task Force Administrative Unit. Coordination Groups, which have been established across agency lines, will continue to meet to identify common needs and problems in the task forces. As before, the OCDE Working Group, chaired by the Associate Attorney General and comprising ranking officials from participating Justice and Treasury agencies and the U.S. Coast Guard, will meet to articulate policy and to coordinate the development and maintenance of the Task Force program.

In essence, the same mechanisms of control within OCDE which have been responsible for developing a high degree of interagency cooperation in the first two years of its operation will continue to exist in 1985.

U.S. Trustee Program

Do you believe the U.S. Bankruptcy Trustees program has been a success? If so, are you requesting authorizing legislation to continue the program, which expires on September 30, 1984?

If the program is continued, do you believe it should be expanded?

In my report to the Congress in January, we stated that the U.S. Trustees program is more effective than the estate administrator system that exists in most non-pilot districts. This view coincides with the study done by our independent evaluators, Abt Associates. We also believe that so long as the current division of administrative and adjudicative functions is maintained, some entity will be required to handle those responsibilities no longer performed by judges.

The Department did not send up a request for authorizing legislation because of the continuing debate over resolution of the constitutional problems of the Bankruptcy Reform Act of 1978. While we would prefer a one-year extension of the pilot program, we have no strong objection to the provisions of H.R. 5174 which extend the program in the Department through September 30, 1986. The current authority expires with the Department's 1984 appropriation act.

Without regard to how well the Trustees may perform their function, we are concerned about conflicts of interest that may arise. Because the Department of Justice is often a claimant against bankruptcy estates, it is very difficult to avoid the appearance of conflict when the Department is simultaneously called upon to impartially administer cases. Because of this potential for conflict, the Department consistently has maintained that either the former Bankruptcy Act's governmental priority must be restored or the program, if expanded, should be moved elsewhere. Ultimately, the question of expansion rests on the role that Congress imparts to the bankruptcy judges.

D.C. Superior Court

Recently Congress authorized seven new judges for the District of Columbia Superior Court. Have you allocated sufficient U.S. Attorney positions in your FY 1985 budget to respond to the new judgeships?

The Department has prepared 1984 supplemental and 1985 amendment requests for both the U.S. Attorneys and the U.S. Marshals based upon the recent authorization of additional judges for the District of Columbia Superior Court. These requests are currently pending at the Office of Management and Budget (OMB).

Support of U.S. Prisoners

The Support of U.S. Prisoners justification indicates that there has been a 50 percent increase in two years in the average jail day rate. What is the reason for increases of this magnitude? What are you doing to keep these costs down? For comparison, what is the average cost to house a prisoner in a Federal Prison System facility?

In response to court orders, prisoner litigation and State detention standards, State and local jails have renovated existing facilities or constructed (or plan construction of) new facilities. In order for these facilities to comply with the court orders and stringent standards, they have been required to greatly expand their staff, renovate existing jail space, increase the square footage per prisoner, as well as increase significantly the level and quality of inmate services provided. When a new facility is opened, significant rate increases (often double the previous rate) are experienced due to higher utility costs and sharp increases in staffing costs. These costs as well as the normal inflationary costs, are passed on to the Federal Government in the form of sharp rate increases. Federal institutions average cost of housing inmates was $35.45 per day in 1983. The United States Marshals Service's contract jail day rate for that period was $30.26.

CAB Transfer

Your justification for the Antitrust Division assumes the transfer of 20 positions and $775,000 from the Civil Aeronautics Board. Do you need specific legislative authority to transfer the antitrust jurisdiction over the airline industry to your agency?

The Airline Deregulation Act of 1978 gives the Antitrust Division jurisdiction over airlines mergers and antitrust immunity to be transferred from the Civil Aeronautics Board effective January 1, 1985.

U.S. Marshals Service - Writs of Eviction

The Marshals Service has been the subject of extensive media coverage in the past few weeks as a result of stepped-up efforts to reduce the backlog of unexecuted writs of eviction in the District of Columbia.

What factors were involved in the determination by the District of Columbia Marshal to increase evictions?

The U.S. Marshals for the District of Columbia is required by District of Columbia code to serve the needs of and execute the orders of the Superior Court. A 1983 District of Columbia audit indicated that the failure of the Marshals Service to expeditiously carry out eviction orders was responsible for eroding the quality of life in the city. The D.C. Landlords' Association also had filed suit in Federal Court to require the Marshal to increase eviction activities.

The stepped up eviction program was closely coordinated with the D.C. government and structured to fit the capability of the D.C. social services agencies to meet the needs of persons evicted.

How many additional staff have been hired for this purpose and at what cost?

The Marshals Service hired 10 additional Intermittant Deputies at an hourly rate of $6.66, to augment a team of 10 regular full-time deputy marshals for the enhanced eviction program. The program, which will run for approximately two months, should end by the end of June.

Where did the Marshals Service obtain the funding for these additional positions? Have other activities, either in the District Marshal's Office or elsewhere in the agency, been curtailed as a result?

Funding for the additional intermittant deputies was allocated from headquarters allocations to the D.C. office. While the program has required the temporary diversion of four additional district office deputies from other work assignments, there has not been any curtailment of other district office activities. (Note: six deputies normally have been assigned to perform evictions.)

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Immigration and Naturalization Service Travel

The 1985 request includes $24,142,000 for the travel and transportation of persons; a 38 percent increase over the $17,503,000 obligated for such purposes in FY 1983.

What are the details of the amount requested for FY 1985 as it appears way out of line with the efforts to control Federal spending?

The 1983 enacted level for travel and transportation of persons was $18,786,000, which included the 1983 reprogramming reduction of $8,409,000.

The increase from 1984 to 1985 of $4,225,000 includes $211,000 for adjustments to base items with the remaining funds requested to support training and alien travel associated with the increase in personnel in the enforcement programs.

The justifications indicate that the $35,356,000 increase for the Border Patrol includes $2,969,000 for travel. Are the agents on routine patrol in their own sectors paid travel allowances. If not, what constitutes this increase?

Border Patrol agents are not paid travel allowances. This travel money is requested for the travel associated with training of new Border Patrol employees.

Inspection of Amtrak Train

Public Law 97-35 requires "enroute customs inspection and immigration procedures" aboard Amtrak's international trains. We are informed that INS and Customs have not complied with the law, citing staff shortages. The noncompliance is particularly a problem with the southbound Adirondak (Amtrak #68).

The State of New York has been subsidizing this train since 1974 and has a financial stake in improving the train's schedule and reliability. Currently the train is scheduled to stop at Rouses Point, New York for 25 minutes for inspection, in lieu of the onboard inspection called for in P.L. 97-35. New York officials say that fully one-half the time, the train is delayed beyond the scheduled time. Amtrak also notes that the previous 15 minute stopover at Rouses Point was increased to 25 minutes at the request of INS and Customs.

Amtrak has provided data that shows that only on 4 of the 31 days of March 1984 was the train cleared in the scheduled 25 minutes. The other 27 days took from 1 to 57 extra minutes, for an average of 16.8 minutes beyond the scheduled 25 minutes.

Why is on-board clearence not given to this train as provided in P.L. 97-35?

Section 305(1) of the Rail Passenger Service Act (45 U.S.C. 545) states that the Secretary of the Treasury and the Attorney General shall (consistent with effective enforcement of the immigration and customs laws) cooperate with Amtrak in providing en route inspection in international inter-city rail passenger service. Although the Service is not opposed to en route inspection, resources at Rouses Point and Champlain, New York are such that we would be forced to take an inspector or inspectors from the vehicular inspection lines for an inordinate amount of time in order to provide this service.

Amtrak officials have proposed that an inspector board the train at Delson, Quebec, allowing approximately twenty minutes in addition to the scheduled twenty-five minute stop in Rouses Point in which to complete the inspection. However, considering the time lost in transporting the inspectors to Delson, and allowing for the occasional late operation of Train #68, the service is not in a position to back-fill these inspector positions during their absence from the port of entry.

Our records, although in conflict with those furnished by Amtrak, indicate considerable improvement in delays at Rouses Point. The average daily delays during the first three months of 1984 were as follows:

January	4.7 minutes
February	3.2 minutes
March	1.9 minutes

Amtrak officials were advised on May 11, 1984, that INS would continue to carefully monitor the situation and provide improvements when and where possible.

What would be the cost of clearing the train enroute as provided in P.L. 97-35?

The cost for the services requested by Amtrak would be minimal. The issue is that of losing the productive hours of the necessary inspectors during their absence from normal duties at the port of entry. However, any additional expenses required for this inspection would be borne by this Service as Amtrak is also exempt from payment of overtime inspectional charges under the Rail Passenger Service Act. Any cost involved in transporting the inspector or inspectors from Rouses Point, N.Y., to Delson, Quebec would be borne by Amtrak. For security reasons, the Service would be hesitant to send one inspector to board the train. Therefore, it would probably require two.

Train #68 does not stop between Montreal and Rouses Point. Accordingly, it would appear a perfect vehicle for pre-clearance in Montreal.

Is there anything preventing pre-clearance at Montreal? If manpower is an impediment, what are the current INS and Customs complements in Montreal, and what additional staff and funds are required to provide pre-clearance?

Pre-clearance at Montreal would not be possible for the following reason. Once the train has departed Montreal, there would be no security between that point and the U.S. border. The service would, therefore, be required to inspect the passengers and crew upon the arrival of the train at Rouses Point. Even though there are no scheduled stops between Montreal and Rouses Point, the train does slow for grade crossings enabling persons to board unnoticed.

Representation Funds

Is the overall limitation of $50,000 on Department of Justice representation expenses allocated as follows? If not, what are the approximate allocations or estimates of such expenses in FY 1984:

Attorney General	*$18,000*
Federal Bureau of Investigation	*17,000*
Drug Enforcement Administration	*12,500*
Immigration and Naturalization Service	*2,000*
Federal Prison System	*500*
TOTAL	*50,000*

Yes, the allocation noted above is the current allocation that I approved. However, the allocation assigned to the Attorney General's office is also used to meet the representation needs of the Department's legal divisions and other organizations which do not receive their own separate allowance.

How much did the above organizations spend on representation in FY 1983 and 1984 to date?

Although precise figures as to how much each organization has spent to date are not available, the Committee can be assured that the demands against the current allocation far exceed what is available.

However, the expenditures by organization for 1983 are as follows:

Federal Bureau of Investigation	$12,000
Drug Enforcement Administration	10,400
Immigration and Naturalization Service	1,277
Federal Prison System	232
Attorney General	11,081
TOTAL	34,990

Did the Department request an increase in the overall representation allowance for FY 1985; if so, how much and for what purposes?

The Department's request to OMB included representation allowances to support the following appropriations:

Appropriation	Amount
Legal Activities and General Administration	$28,000

This category would continue to provide funding support to the Attorney General as well as provide initial funding of $3,000 for the Antitrust Division and $2,500 for the Criminal Division.

Federal Bureau of Investigation	47,000

The requested funding level would have provided the FBI an additional $30,000 due to their increased efforts in drug enforcement and the

Appropriation	Amount
Organized Crime and Drug Enforcement Task Force efforts. The additional authority would also support their legal attaches program.	
United States Attorneys and Marshals	$35,000
This request would solely support the United States Attorneys liaison role with the Law Enforcement Coordinating Committees. The funding would enable the LECCs to provide coffee and donuts at their meetings with State and local law enforcement officials. This request would provide approximately $350 for each U.S. Attorneys' office.	
Drug Enforcement Administration	12,500
No change from 1984.	
Immigration and Naturalization Service	2,000
No change from 1984.	
Federal Prison System	500
No change from 1984.	
TOTAL..	125,000

INS officers-in-charge (OIC's) are required as part of their official duties to establish and maintain relationships of value to the United States and INS in foreign countries, however, unlike their counterparts in Justice, or other Departments, these officers are expected to bear all the costs of establishing and maintaining such relationships from their personal finances.

In FY 1983, the OIC in Seoul spent an estimated $400 in personal funds to carry out representation duties. He estimates that a modest number of representational activities in FY 1984 will cost $900. A similar estimate from the OIC in Bangkok comes up to $2,000 plus $200 for gratuities. We are informed that the OICs and the overseas District Directors all report having to go significantly "out of pocket" to carry on essential representation duties.

Has the Department looked into the representational requirements of the INS; and if so, is the Department concerned about the cost of representation of INS officials overseas?

The representational funding issue is a problem for the entire Department. The demands on the Department's limitation not only affect INS but our other staff who interact with foreign law enforcement officials. However, compared to the other Department organizations, INS has not submitted any significant request for additional funding.

Approximately how much does the FBI and DEA spend per year on representation overseas?

Although the precise figures are not available because of the changing demands both within the United States and overseas for this funding, it can be said that the majority of the allowance for both of these organizations goes to either overseas expenditures or to hosting foreign officials who visit our country.

How does the INS staffing compare to the FBI and DEA personnel overseas; in terms of numbers of personnel?

The workyears associated with overseas assignments for the Department are as follows:

	FTE
Civil Division..........................	1
Federal Bureau of Investigation..........	55
Immigration and Naturalization Service....	200
Drug Enforcement Administration..........	283
TOTAL..................................	539

How much of the FY 1985 increase in representation that Department was denied by OMB, would have gone to INS; or what does the Department think is an appropriate allowance for the representation requirements of the INS OICs overseas?

Although nothing specifically was requested for INS, the $10,000 increase for the Office of the Attorney General would have been used to meet any increased requirements for organizations such as INS. In the past INS has not expended its entire representation allowance, nor has it requested significant increases as have the U.S. Attorneys and the FBI. Any increases that INS has requested could have been met within the increased allocation requested for the Attorney General.

Contracting for Prisons

According to page 19 of the justifications, the Federal Prison System (FPS) is requesting "$1,656,000 to continue a 1984 initiative of housing up to 600 sentenced offenders, principally immigration violators, in a private contract facility."

Is this not a major departure from current practice, since I do not recall previous use of private detention facilites?

The Federal Prison System has not, heretofore, contracted with a private firm for the detention of Federal offenders. The FPS does contract with private agencies (profit and non-profit) for the housing of Federal offenders in community treatment centers and for the housing of juvenile offenders.

What is the authority for contracting for such facilities?

The authority for such private contracts is found in Title 18 U.S.C. Sections 4002 and 4082, the latter section, as amended by Public Law 89-176.

Would the guards at such a private facility have the same authority as correctional officers at FCIs to apprehend escapees? For example, if there were an escape would they just blow a whistle and wait for the local sheriff?

The guards at such a private facility would have the same authority and responsibilities as correctional officers at a Federal Correctional Institution in apprehending an offender on the premises in the process of escaping. In addition, a FPS official would be physically located at the facility to monitor and oversee the operations of the private contractor.

The 1984 justifications spoke only of contract confinement in State and local institutions or community programs in State and local correctional institutions, juvenile facilities, local detention facilities, and community-based (half way house) facilities. Does the Department agree that this so-called 1984 initiative to contract for a private facility for 600 offenders is subject to the Committee's reprogramming requirements before being inplemented?

The initiative to contract with a private contractor for housing minimum security immigration violators did not involve the Committee's reprogramming requirements because the request was contained in a formal 1984 supplemental transmitted to the Committee. The Department believes that the supplemental appropriations request process is an appropriate and adequate vehicle to elicit Congressional review, consideration and approval or rejection of such a proposal, based on its merits. That view obtains, as well, regarding the 1985 appropriation request. Addressing the substantive aspects of the proposal, we view it as a viable alternative to incarceration of offenders in Federally-operated facilities which are currently 30 percent overcrowded.

What is the current status of the 1984 initiative?

The 1984 supplemental request was to finance the housing of approximately 500 to 600 short term, minimum security offenders at a private facility in Mineral Wells, Texas. The Federal Prison System has withdrawn from negotiations with the contractor because of strong opposition from local officials.

Did the FPS conduct an A-76 study before deciding to contract for such a facility? If if did, what was the comparative cost of operating this facility under contract as opposed to a regular Federal institution?

The FPS was in the process of determining the applicability of Circular No. A-76 to this particular situation at the time negotiations were cut off. The FPS's decision to pursue the private contract initiative was based, principally, on the objective of reducing overcrowding. There was no expectation that funds would be saved in the process. The supplemental request of $4.8 million was based on housing 600 offenders for three quarters of the fiscal year at about $30 per capita, per day. The actual 1983 average daily cost for housing offenders in comparable Federal facilities (security level 1) was $24.14. It should be pointed out, however, that the private contract price takes into account the costs of amortizing capital construction whereas the cost of FPS facilities reflects only the operational costs.

The facility is purportedly for immigration violators. Are you talking about turning over the Mariel Cubans at Atlanta to this private facility, since we thought most immigration violators were returned to their home countries?

Such a facility would be used only for short term, sentenced, minimum security offenders. The Cubans housed at Atlanta obviously do not fit this classification, and would not be housed in such a facility. The immigration violators to be housed in such a facility would eventually be returned to their home countries, after completion of sentence. As mentioned earlier, these are sentenced aliens as opposed to unsentenced aliens who are detained temporarily until deportation is arranged.

Please display, for the record, where such private detention facilites are now located in the United States.

The FPS does not have knowledge of all such contractors nationwide and their locations. We can display the names and locations of the prospective contractors who submitted bids to contract with the FPS:

- Operational Support Services, Big Spring, Texas
- Palo Duro Private Detention Services, Inc., Amarillo, Texas
- Behavioral Systems Southwest, Rube Inc., Pomona, California
- Corrections Corporation of America, Nashville, Tennessee

Public Health Service Physicians

In the report accompanying the FY 1984 Appropriations Bill, we stated our concern about the substitution of General Schedule or contract personnel for Public Health Service (PHS) Commissioned Corps personnel which would impair the quality of medical care at Bureau institutions. By letter of March 22, 1984, the Department notified the Committee of its intentions with reguard to use of PHS physician at FPS facilities.

Currently, as I understand it, the FPS has 65 PHS officers assigned to it, plus 14 National Health Service Corps obligors serving their commitment in health manpower shortage areas. The Adminiatration proposes to reduce the allocation to PHS so that only 30 PHS position would be assigned to prisons, plus whatever National Health Service obligors the FPS can secure.

The PHS Commissioned Officers Association contends that OMB "naively contends that General Schedule physicians and contract care providers are available to meet the Bureau's needs. What OMB ignores is the FPS's disastrous experience in the past assignment of General Schedule physicians for the program and the fact that many contract care providers consider prisoners to be an undesirable clientele by the very nature of the prison population."

Am I correct in stating that in order to fill critical physician vacancies under the General Schedule, the Bureau has had no other choice than to select older individuals in late career or post-retirement status with declining interest, knowledge, skills and abilities?

It has been the Federal Prison System's general experience that Civil Service physicians who fill FPS vacancies tend to be either near or passed retirement age with considerably less enthusiasm and fewer skills for correctional medical practice. Often major performance defects are found after employment. The most common deficiency is that these physicians do not have the stamina required and that they are less able to deal with physical encounters.

Is it not also true that in some instances serious personnel problems have arisen among such General Service physicians long after their initial employment, and that 38% of these physicians have left the Bureau under negative circumstances, and an additional 20% have cited dissatisfaction with a penal assignment as the basis for their departure?

Yes. A recent ten-year study (1972-1982) identified that 38 percent, or 27 out of 71 physicians, who separated from FPS employment did so under negative personnel conditions and circumstances. In addition, 20 percent, or 14 out of 71, resigned because of personal dissatisfaction with prison work.

I share the concern that the OMB strategy to phase-out the use of the Corps in the Bureau's program raises a quality-of-care issue with respect to the United States' obligation to address the health needs of the Federal prison population. Since I fail to detect any savings in the OMB phase-out strategy, can you provide any logical reason for us to approve the change?

I understand that the phase-out of PHS medical personnel in the Federal Prison System is one small facet of a general reduction in the delivery of direct medical services by the PHS. Consequently, I am not able to speak specifically regarding the overall rationale. From a parochial perspective, it is clear that the FPS will face substantial problems in replacing PHS personnel with General Schedule and contract physicians and dentists.

FPS Travel Costs

The 1985 request for the Salaries and expenses account included $8,418,000 for travel of persons and $2,693,000 for transportation of things. The amounts for FY 1983 were $6,947,000 and $2,279,000 respectively; so that these categories are increasing approximately 20 percent.

How much of the request for travel and transportation relates to permanent change of station moves?

Of the total $11,111,000 requested for travel/transportation of persons and things for 1985, approximately $2,600,000 relates to permanent change of station moves.

During FY 1983 and 1984 to date, how many employees were involved and how much was spent in travel and transportation for moving employees?

In FY 1983 there were 524 permanent change of station moves involving travel and transportation costs of $1,971,728. Through the first six months of FY 1984, there have been 414 moves with travel and transportation costs of $1,867,310.

During FY 1983 and 1984 to date, how many employees at GS-14 or above moved and at what cost after:

- *Serving less than a year at a location?*
- *Serving less than 2 years at a location?*
- *Serving less than 3 years at a location?*

The number and cost of moves for GS-14 and above employees who moved and:

	Number	Amount
Served less than one year	12	$77,909.99
Served less than two years	24	195,242.37
Served less than three years	10	65,022.34
TOTAL	46	338,174.70

In view of the overall financial climate, how can we justify the expense of employee transfers more than once every 3 years?

The Federal Prison System acknowledges that permanent change of station moves are expensive and that these costs continue to increase. Nevertheless, we believe that these costs (which represent approximately one percent of the total appropriation) are well worth the investment in terms of the versatility gained by staff with a background of varied institutional experience. We believe that the mobility of middle and upper level field managers is a key ingredient, which infuses institution operations with new ideas and renewed vitality and which helps to avoid the sometimes negative consequences of entrenched leadership (e.g., management cliques). Further, we believe that the logistics of effective field management during a period of rapid growth and expansion, such as the Federal Prison System is currently experiencing, require the ability to quickly move competent managers into newly activated facilities, and also to promptly fill the leadership vacuum at the existing institutions they have departed.

FPS Budget Structure

On March 26, 1984, the Department of Justice proposed a consolidation of the FPS budget structure. This appears to be a good step, except for the proposal to combine the "Community program management", "Contract Community Treatment Centers", and "Contract Confinement" programs into a new "Community Corrections and Contract Confinement" budget activity.

Several years ago the Bureau cut off funding to the community treatment centers when funds got tight. This year we have an unbudgeted initiative to contract for a 600 inmate private facility. This proposal would permit the Bureau to make such major moves without notifying the Committee.

Mr. Carlson, unless you have something to submit for the record, that is more compelling than Mr. Rooney's letter of March 26th. I see no reason to change this portion of your budget structure.

The Department believes that the revised activity and program structure proposed for the Federal Prison System is a significant improvement over the old structure in terms of enhancing comprehension, facilitating review and evaluation, streamlining the budget submission, and providing the FPS with greater management flexibility. The current structure is unwieldy, complex, and unreasonably restricts the FPS' flexibility in effectively managing its resources. The present structure results in a budget submission of great volume and unduly complicated detail. The proposed combination of "Community Programs Management", "Contract Community Treatment Centers" and "Contract Confinement" makes sense both programmatically and organizationally. These are the FPS' major contract programs and they are managed by the same organizational entities in headquarters and in the field.

We wish to allay the Subcommittee's fears concerning the FPS accomplishing reprogramming actions against the Committee's wishes. As pointed out in another response above, the proposal to contract with a private firm to house 600 short term, sentenced offenders was not an "unbudgeted initiative", but was contained in a formal supplemental appropriation request transmitted to the Subcommittee. Even if sufficient funds would have been available within the proposed new program "Community Corrections and Contract Confinement", the FPS would be required to notify the Subcommittee under its current reprogramming procuedures regarding the contracting out of functions previously performed by Federal employees.

The situation referred to several years ago, dealt with a very substantial budget reduction which presented the FPS with the options of either closing down an institution or reducing contract programs. The "Contract Community Treatment Center" and the "Contract Detention" programs are essentially discretionary programs, and can be used to benefit overall operations by reducing institution-based population and decreasing the rate of overcrowding. Including both in one program will maximize the FPS' flexibility in managing resources within the program as well as between programs. For example, the FPS can immediately use funds to increase placements in Contract CTC's.

Martin Luther King, Jr. Center

Last year the Committee provided $300,000 for a demonstration training program in nonviolent conflict resolution to be conducted by the Martin Luther King, Jr. Center for Nonviolent Social Change, Inc. What is the current status of that demonstration project?

Training Center staff and Martin Luther King, Jr. staff have met on numerous occasions, and we are now completing plans to implement that training as a part of our overall curriculum at the Staff Training Center at Glynco, Georgia.

Foreign Travel

On February 21, 1984, the staff requested a report on foreign travel by Justice Department high level executives since January 20, 1981. On May 16, nearly three months later, the Department finally transmitted to the Chairman such information for persons of the rank of Assistant Attorney General or higher, which I submit for the record.

Why was this information delayed?

As Warren Kane was advised in conversations with Department of Justice staff, the accounting system of the Department does not file travel vouchers by destination, or by grade of employee. Therefore, considerable research was required to retrieve the information, which had already been processed and filed. In addition, the Attorney General's trips involved complex billing procedures between foreign embassies, the Drug Enforcement Administration, and other components of the Department of Justice. Because the Department had not received complete billings for some of the travel, the expenses had not been vouchered and complete information was not available. Although complete information on those expenses still had not been received, a decision was made to transmit to you the package containing as much information as possible, in an effort to comply with your request.

We are informed that the Office of Legislative Affiars headed by Mr. McConnell did not want this information furnised to the Subcommittee. Was that because the report indicates Mr. McConnell took a 17-day trip in November, 1982, to Tokyo, Seoul, Hong Kong and Hawaii?

As can be seen from the explanation above, Mr. McConnell's trip had nothing to do with the delay of the information.

Mr. McConnell traveled as part of a coal export mission at the request of the Commerce Department. What particular expertise in coal exporting did Mr. McConnell bring to this mission?

The trip was a trade mission which promoted foreign involvement with U.S. coal in a variety of ways -- not just the purchase of coal. Among other things, the Commerce Department sought to encourage foreign investment in the development of American coal resources. On an earlier trip to Europe for the same purpose, Commerce discovered that its representations as to the acceptability of foreign investments in joint ventures in coal and the ability to comply with U.S. environmental laws were viewed skeptically. The Europeans thought that they were hearing salesmen from Commerce and industy, but that Justice would have a different view. Commerce, therefore, requested that someone from Justice with Department-wide responsibilities go on the Pacific Basin trip, to make the case on these and other issues where the credibility of the Justice Department was needed. McConnell was selected due to his availability at the time of the mission -- Congress was out of session -- and the fact that he is one of the limited number of Presidential appointees with Department-wide responsibilities.

The report details four overseas trips for the Attorney General. It is incomprehensible to me that the costs of the trips in April and October 1983 are not available. Each quarter Congressional overseas travel is reported publicly and the embassies supply the necessary information for those reports.

Is there any reason why the report for the Attorney General, including the cost of the military aircraft furnished by HQ-MAC cannot be furnished within 15 days so this report can be completed for our record?

We have received billing for the transportation shown on the following chart, which was prorated between organizations, by person. We have not yet received the billing from the Coast Guard for the October, 1983, trip to Europe, and cannot provide those transportation costs at this time.

HQ-MAC and U.S. Coast Guard Transportation Costs
Attorney General's Foreign Travel

Trip	Dates	Cost*
Far East	10/19/82-11/10/82	$32,801.35
South America	4/4/83-4/16/83	5,237.05
Canada	8/31/83-9/1/83	4,768.50

*Entire cost for air transportation has been prorated per traveler, for billing to cost centers of travelers' organizations.

Washington, D.C. 20530

May 16, 1984

Honorable Paul Laxalt
Chairman
Subcommittee on Departments of Commerce,
  Justice, and State, the Judiciary
  and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This transmits the summary of foreign travel data requested by Warren W. Kane on February 21, 1984. Because of the difficulties involved in obtaining all of the information requested back to January 20, 1981, Mr. Kane has agreed that the data could be limited to persons with the rank of Assistant Attorney General or above. Foreign travel of senior officials in the bureaus was also excluded under this agreement.

Sincerely,

William D. Van Stavoren
Acting Assistant Attorney General
  for Administration

Enclosure

FOREIGN TRAVEL ITINERARY

NAME: William French Smith

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Trans-portation	Other Travel Cost
10/19/82-11/10/82	Wash.D.C. to Los Angeles, to Elemendorf, Alaska to Tokyo, Japan to Hong Kong to Bangkok to Islamabad to Peshawar to Paris, Fr. to Rome, Italy to Wash.D.C.	Furtherance of DOJ mission	24	$857.53	$837.53	*	$20.00
8/31/83-9/1/83	Suffolk City, N.Y. to Quebec City, Canada to Andrews	Furtherance of DOJ mission	2	148.40	147.06	*	1.34
4/4-16/83	Wash.D.C. to Mexico, Peru, Bolivia, El Salvadore, to Wash.D.C.	Furtherance of DOJ mission	13	**			
10/9/83-10/17/83	Wash.D.C. to Spain, Rome, Arabat, Morocco to Wash.D.C.	Furtherance of DOJ mission	9	**			

* Transportation furnished by HQ-MAC.

** The processing of travel records will require additional time due to delay of billing procedures for a trip of this nature and of the way in which travel vouchers must be complied. The bulk of the bills are submitted to the Department through the Embassies in each of the countries visited.

FOREIGN TRAVEL ITINERARY

NAME: D. Lowell Jensen

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Trans-portation	Other Travel Cost
10/5-9/82	Wash.D.C. to Rome, Italy and return	To attend the Narcotics Conf. in Rome, Italy	5	$1,747.00	$314.00	$1,433.00	$ -0-
3/22-23/83	Wash.D.C. to Nassau, Bahamas and return	To meet and confer with Prime Minister Pindling	2	613.00	205.00	403.00	5.00
10/10-22/83	Wash.D.C. to Paris, Fr.-Cannes, Nice and return	To attend the annual Interpol General Assembly as the head of the U.S. delegation.	8	1,551.17	602.25	947.00	1.92

FOREIGN TRAVEL ITINERARY

NAME: J. Paul McGrath

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Transportation	Other Travel Cost
11/6-13/82	Wash.D.C. the Hague in the Netherlands, London and return	Travel to the Hague to review proceedings before the Iran-U.S. claims tribunal. Travel to London—to meet with various insurance companies regarding significant aviation litigation	8	$1,496.13	$256.20	$1,123.00	$116.93

FOREIGN TRAVEL ITINERARY

NAME: Kevin D. Rooney

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Transportation	Other Travel Cost
11/1-6/82	Wash.D.C. to Strasbourg, France and return	Representing the U.S. at the Council of Europe; attending the third Colloquy on use of computers in the Administration of Justice	6	$1,355.45	$320.75	$971.00	$63.70

FOREIGN TRAVEL ITINERARY

NAME: Robert A. McConnell

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Trans-portation	Other Travel Cost
11/5-21/82	Wash.D.C. to Tokyo, Japan Seoul, Korea-Hong Kong-Hawaii-Wash.D.C.	To participate in the coal export mission to the countries of the Pacific Rim (at the request of the Commerce Dept.	17	$4,727.32	$1,539.00	$3,029.05	$159.27
4/9-13/83	Wash.D.C. to Geneva, Switz. and return	To attend an Int'l Immigration Seminar with members of Congress and other Gov't officials	5	3,567.65	300.80	3,133.00	133.85

FOREIGN TRAVEL ITINERARY

NAME: Jonathan C. Rose

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Transportation	Other Travel Cost
10/19-22/83	Wash.D.C. - London, Eng. and return	Speaking to Financial Times Limited Conference Organization	4	$1,400.83	$318.00	$983.00	$99.83

FOREIGN TRAVEL ITINERARY

NAME: Theodore B. Olson

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Transportation	Other Travel Cost
11/6-13/82	Wash.D.C. Boston-Paris, France, Amsterdam- London, Eng. and return	To review proceedings before the Iran-U.S. claims tribunal and to meet with various insurance companies regarding significant aviation litigation	8	$1,956.86	$609.50	$1,123.00	$224.36
5/8-13/83	Wash.D.C. to Rome, Italy and return	Attend 3rd Int'l Congress on Legal Informatics	6	1,628.50	538.00	1,012.00	78.50

FOREIGN TRAVEL ITINERARY

NAME: William F. Baxter

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Trans-portation	Other Travel Cost
1/11-16/82	Wash.D.C. to London-Paris and return	To have discussions with the Dept. of Trade in London and to participate in the OECD Committee of experts on restrictive business practices meetings in Paris, France	6	$1,910.52	$438.50	$1,446.00	$26.02
6/19-24/82	Wash.D.C. to Paris, Fr. and Berlin, Germany	To attend meetings of the OECD Committee of experts on restrictive business practices (Paris) and a meeting at the German Federal Cartel Office (W. Berlin)	6	2,202.85	405.75	1,748.00	49.10
8/21-27/82	Wash.D.C. to Tokyo, Japan and return	Consultations with the Japan Fair Trade Comm. and the Ministry of Int'l Trade and Industry	7	2,578.44	458.50	2,044.00	75.94

FOREIGN TRAVEL ITINERARY

NAME: William F. Baxter (Continued)

Period of Travel	Itinerary	Purpose of Travel	Days Abroad	Total Cost of the trip	Per Diem	Trans-portation	Other Travel Cost
1/23-29/83	Wash.D.C. to Brussels, Belgium and Paris, Fr. and return	To address the Office de Formation et de Documentation Internationales on U.S. Antitrust Policy today in Brussels and attend OECD meeting in France	7	1,928.07	381.50	1,491.00	55.57
6/17-23/83	Wash.D.C. to Paris, Fr. and Frankfurt Gem., and return	To participate in OECD Committee of experts on restrictive business practices meeting in Paris, Fr. and to participate in the 6th Int'l Antitrust Law Conference in Frankfurt	7	*$2,222.10	$491.50	$1,656.00	$74.60
10/13-17/83	Wash.D.C. to London, Eng. and return	To participate in a conference on US/UK agreement of Antitrust Laws	5	2,238.14	**95.14	2,083.00	60.00

* State Department paid $1,793.60, Justice paid $428.50.

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

[CLERK'S NOTE.—The following is testimony submitted for the record on behalf of the fiscal year 1985 budget request of the Maritime Administration:]

PREPARED STATEMENT OF H. E. SHEAR

MARITIME ADMINISTRATOR

Mr. Chairman and Members of the Committee:

The Maritime Administration (MARAD) is charged with promoting the development of the American maritime industry. In the context of the worst slump in shipping and shipbuilding in over 50 years, MARAD has vigorously pursued this goal through efforts at reforming outmoded practices and programs.

Our 1985 request balances the need to meet responsibilities for promotion of the American maritime industry with allowance for overall budget realities. It calls for total appropriations of $453,480,000. This comprises $377,750,000 for Operating-differential Subsidies, $3,000,000 for Research and Development (to be augmented by a transfer of $7,000,000 in unused Construction-differential Subsidy appropriation), and $72,730,000 for Operations and Training. Some of the details behind these appropriation requests are as follows:

OPERATING-DIFFERENTIAL SUBSIDIES

The Merchant Marine Act of 1936 provides that operating subsidies equal the differential between certain U.S. and foreign ship operating costs. The Operating-differential Subsidy program covers wages, maintenance and repair, some insurance costs, and, for some vessels, subsistence.

The Administration continues to meet its obligations under existing Operating-differential Subsidy contracts. The appropriation request for Operating-differential Subsidies totals $377,750,000. This will support the operation of 124 liner and 18 bulk vessels. The total is $25,250,000 greater than the 1984 total of $352,500,000 for the same account.

RESEARCH AND DEVELOPMENT

The Maritime Administration's Research and Development program works to make the U.S. shipbuilding and ship operating industries more productive and competitive. Our research activities address problems that individual companies could not undertake within their own limited resources and which are beneficial to the maritime industry as a whole, and focus on longer term problems rather than those of an operational nature.

A 1985 requested program for Research and Development of $10,000,000 involves $3,000,000 in new appropriations. The $7,000,000 difference would be an appropriation transfer from unused Ship Construction funds. The requested $10,000,000 reflects a reduction of $1,385,000 from the level of the 1984 appropriation, reflecting a reduction in emphasis on applied research.

OPERATIONS AND TRAINING

The request for Operations and Training is $72,730,000, $553,000 below the 1984 appropriation.

We are requesting $34,473,000 for Maritime Education and Training. Of this amount, $21,940,000 is for the United States Maritime Academy at King's Point, New York. Increases over the amount appropriated in 1984 include $640,000 for the modernization program, and $1,034,000 to cover increases in pay and in other operating expenses. Including this requested increase, the modernization appropriation will total $2,340,000 and will cover the first of two phases of a program to renovate student barracks service areas.

We are requesting $11,123,000 for assistance to the six state marine schools (California, Maine, Massachusetts, Michigan, New York, and Texas). This total includes $600,000 for direct payments to the schools; $2,523,000 for student incentive payments; and $8,000,000 for schoolship maintenance and repair. The request for student incentive payments reflects a reduction of $77,000 below the 1984 level as the first step in a four-year program to reduce the total number of such payments by 50 percent. The number of U.S.-flag ships and the associated demand for officers has declined since the current quota system was established in the early 1970's. The request for schoolship maintenance and repair includes an increase of $532,000 for cost increases. No funds are requested for fuel, as we consider it to be a function of the individual States to fund ship operating costs.

I am pleased to tell you that the Maritime Administration has recently purchased the SANTA MERCEDES from Prudential Lines to replace the Massachusetts Academy Schoolship, TS BAY STATE. $10,000,000 had been carried over from 1983 to acquire and convert a replacement vessel. $5.8 million remains available for towing and conversion of the vessel to schoolship configuration, which at the present time we anticipate will be adequate.

Finally, we are seeking $1,410,000 for the Additional Training Program. This activity encompasses training in shipboard firefighting and diesel engine operation and maintenance as well as the administration of the Merchant Marine Academy and state maritime school programs at the headquarters level. The requested funds include an increase of $38,000, primarily to cover pay increases.

For the National Security Support Capability account we are requesting $9,111,000. This includes $7,506,000 for the National Defense Reserve Fleet (NDRF) and $1,605,000 for Emergency Planning/Operations. An increase of $635,000 over the 1984 amount is sought for the initiation of a two-year program to construct 11 general purpose workboats for the reserve fleets. An additional increase of $428,000 is requested to cover pay increases and the escalation of operating expenses in the National Security activities. Each of the two National Security Support Capability programs is directly supportive of the Maritime Administration's national security responsibilities.

Finally, $29,146,000 is requested to cover Other Operating Expenses, that is, expenses incurred for the pay and allowances of our headquarters and region staffs not covered under any of the accounts thus far mentioned, plus headquarters and regional overhead costs. The requested $29,146,000 is $783,000 below the 1984 appropriation level for this account as a result of management savings, which will more than offset expected increases in pay and other costs. Modest staff reductions are planned for 1984 and 1985 which will be accomplished through attrition without reorganization or Reduction in Force.

Thank you very much, Mr. Chairman.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

[CLERK'S NOTE.—The following is testimony submitted for the record on behalf of the fiscal year 1985 budget request of the Commission on Security and Cooperation in Europe:]

PREPARED STATEMENT OF DANTE B. FASCELL

CHAIRMAN

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today in my capacity as Chairman of the Commission on Security and Cooperation in Europe to support the budget requirements of the Commission for Fiscal Year 1985. With me is Spencer Oliver, the Staff Director of the Commission since its creation in late 1976, and Deborah Burns, the Commission's Budget Officer.

Public Law 94-304 created the Commission and authorized an appropriation of $350,000 for each fiscal year to remain available until expended. The Foreign Relations Act of 1979 (Public Law 95-426) amended the enacting legislation to increase the amount of appropriated funds to $550,000. Our budget request for Fiscal Year 1985 is $550,000 for an estimated operating budget of $653,000.

Pursuant to Section 6 of Public Law 94-304, I hereby submit for the record the Commission's Annual Report for 1983. In addition, I would like to submit for the record a copy of H.R. 4504, legislation I introduced on November 18, 1983 which primarily provides for rotation of the chairmanship of the Commission between the House and the Senate beginning with the 99th Congress.

ROTATION OF COMMISSION CHAIRMANSHIP

The enacting legislation provides that the Commission Chairman be designated by the Speaker of the House. I have served as the Chairman since the Commission was created in 1976. At our first organizational meeting in 1976, we determined that it would be useful to appoint a Co-chairman from the Senate although there was no mandate for such a position in the Public Law. As you are aware, in recent years some members of the Senate have been concerned about this arrangement and Senator Dole, our Co-chairman since January of 1981, has requested that the legislation be amended to require a rotation of the chairmanship as is done with joint committees of the Congress. That is why I introduced H.R. 4504 last year. My bill calls for rotation of the chairmanship beginning with the first session of the 99th Congress. It also officially creates the position of Co-chairman which had previously been only an informal arrangement. The Senate has not yet acted on the legislation which was passed by the House of February 8, 1984.

AMENDED AUTHORIZATION

As you can see, the Commission has submitted a modest budget for Fiscal Year 1985 which remains within the previously authorized limit of $550,000. Due to the prolonged Madrid Meeting, which ended in September of 1983 after three years of negotiations, the Commission has had ample carryover funds to fulfill our mandate without requesting an increase in its authorization ceiling for FY 1985. I have, however, in H.R. 4504, provided for removal of the ceiling figure of $550,000 on the authorization to allow future chairmen to submit requests to this committee on the basis of annual projected need.

FOLLOW-UP TO THE MADRID MEETING

The second follow-up meeting of the Conference on Security and Cooperation in Europe, began in Madrid, Spain, on November 11, 1980 and, because of deep East-West differences, did not end until September 9, 1983. During the course of the meeting the Commission published several interim reports and recently disseminated a report on the conclusion of the meeting.

The Concluding Document of the Madrid Meeting calls for a series of experts meetings on various subjects contained in the Helsinki Final Act. The first of these meetings, the Stockholm meeting on Confidence and Security-Building-Measures, is already underway. The Stockholm meeting is scheduled to meet for 29 weeks in calendar year 1984 and is expected to continue intermittently at a similar pace until the next Belgrade/Madrid type meeting which takes place in Vienna, Austria in late 1986. It is presently the only East-West arms control forum in session.

Later this month, the second of these meetings of experts will take place in Athens, Greece. This meeting will be a follow-up to the meeting on Peaceful Settlement of Disputes which was held in Montreux, Switzerland in 1978. The Commission is participating in both of these meetings and is assisting with planning and preparation for these and future experts meetings.

FISCAL YEAR 1985 ACTIVITIES

In addition to the anticipated continuation of the Stockholm meeting, in Fiscal Year 1985 there will be an Experts Meeting on Human Rights in Ottawa, Canada beginning on May 7, 1985; a Seminar in Venice on Economic, Scientific and Cultural Cooperation in the Mediterranean, a follow-up to the Valletta meeting of experts, will open on October 16, 1984; and a preparatory meeting for the Cultural Forum in Budapest, Hungary will commence on November 21, 1984. The Cultural Forum itself is not scheduled until October of 1985. The Commission will, as in the past, not only participate in these meetings, but will play a major role in the planning and preparation for such meetings. We also plan to participate in the commemoration of the Tenth Anniversary of the signing of the Final Act on August 1, 1985 in Helsinki, Finland.

The Commission will continue to process the hundreds of cases relating to emigration, family reunification and binational marriages which come to us from Congressional offices and individuals throughout the signatory countries. We will continue to research and monitor implementation of all sections of the Helsinki Final Act, particularly its provisions dealing with human rights and human contacts. This casework takes up a major portion of the Commission's staff time and resources.

At the present time, we are undertaking a major project which should be completed by end of the first quarter of Fiscal Year 1985. This report will take a comprehensive look at the positive bilateral developments which have taken place among the signatory countries -- particularly East and West -- since the signing of the Helsinki Final Act in 1975.

GAO AUDIT

We have asked the U.S. General Accounting Office to perform an evaluation of how well the Commission has fulfilled its mandate under the law since it was created in the summer of 1976. I think we are probably unique in this regard since we are the only Government agency that I can recall that has ever asked the GAO to carry out a self-initiated audit.

CLOSING REMARKS

As you know, I will pass the chairmanship of the Commission on to my successor at the end of this Congress. I am proud of the work that the Commission has done and I am sure it will continue to build on the solid foundation that I believe we have created during the past eight years. I am sure that the fine work of the Commission will continue to make a major contribution to the improvement of East-West relations as well as to the cause of human rights and fundamental freedoms.

I am particularly grateful for the cooperation and support that the Commission has received from you and your subcommittee, Mr. Chairman. Without your help and understanding we could never have done so much for so many people who looked to us for assistance. I hope, therefore, that you will continue to fund the Commission at the same level that you have funded it for the past three years.

Thank you.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

FISCAL YEAR 1985 BUDGET REQUEST

Under an amendment dated October 7, 1978 (Public Law 95-426), there is authorized to be appropriated and remain available until expended each fiscal year $550,000.00 to assist in meeting the expenses of the Commission in carrying out the provisions of Public Law 94-304 authorizing the Commission on Security and Cooperation in Europe. Such appropriation is to be disbursed on voucher subject to the approval of the Chairman of the Commission.

The Commission on Security and Cooperation in Europe was established on June 3, 1976, pursuant to Public Law 94-304, approved by the 94th Congress. The Commission is authorized and directed to monitor the actions of the 35 signatory countries, including the United States, which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe (CSCE), with particular regard to the provisions relating to cooperation in humanitarian fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and greater interchanges of people and ideas between East and West.

The enacting legislation provides that the Commission be composed of the following: (1) Six members of the House of Representatives, four members selected from the majority party and two selected from the minority party, after consultation with the minority leader of the House. The Speaker of the House shall designate one of the House Members as Chairman; (2) Six Members of the U.S. Senate, four members selected from the majority party and two, after consultation with the minority leader of the Senate, from the minority party; and (3) Three members to be appointed by the President, one each from the Departments of State, Commerce and Defense.

The Commission requests an appropriation of $550,000 for Fiscal Year 1985. It is estimated that there will be an unobligated balance of $103,000 available at the end of FY 1984 which, when coupled with our request of $550,000, will enable the Commission to carry out its mandate without further authorization.

A breakdown of this request by object classification follows.

ESTIMATE FOR FISCAL YEAR 1985 BUDGET

11.9	Personnel Compensation	$444,000.00
12.1	Personnel Benefits	$36,000.00
21.0	Travel and Transportation of Persons	$20,000.00
23.0	Rent, Communications and Utilities	$58,000.00
24.0	Printing and Reproduction	$50,000.00
25.0	Other Services	$35,000.00
26.0	Supplies and Materials	$10,000.00
	TOTAL:	$653,000.00

EXPLANATION OF FISCAL YEAR 1985 BUDGET REQUEST

Budget Authority FY 1983	$550,000.00
Unobligated Balance Beginning FY 1983	$158,000.00
Subtotal	$708,000.00
Total Budgetary Resources FY 1983	$708,000.00
Total Obligations FY 1983	$526,000.00
Unobligated Balance End FY 1983	$182,000.00

* * * * *

Budget Authority FY 1984	$544,000.00
Unobligated Balance Beginning FY 1984	$182,000.00
Subtotal	$726,000.00
Funds Available Start FY 1984	$726,000.00
Estimated Total Obligations FY 1984	$623,000.00
Estimated Unobligated Balance End FY 1984	$103,000.00

* * * * *

Budget Authority FY 1985	$550,000.00
Estimated Unobligated Balance Start FY 1985	$103,000.00
Subtotal	$653,000.00
Estimated Funds Available Start FY 1985	$653,000.00
Estimated Total Obligations FY 1985	$653,000.00
Estimated Unobligated Balance End FY 1985	NONE

JUSTIFICATION OF ESTIMATES

PERSONNEL COMPENSATION

The estimated obligation of $444,000.00 covers salary costs for thirteen permanent full-time and two permanent part-time employees, as well as temporary positions such as summer interns and semester students to assist in research. The authorized staff positions include a staff director, deputy staff director, nine staff assistants, three clerical and administrative employees and a part-time research assistant.

11.1 Permanent Positions

Staff Director and General Counsel	$69,600.00
Deputy Staff Director	$42,700.00
Senior Staff Assistant	$36,000.00
Staff Assistant	$36,000.00
Staff Assistant	$31,500.00
Staff Assistant	$26,200.00
Staff Assistant	$26,200.00
Staff Assistant	$25,400.00
Staff Assistant	$20,900.00
Staff Assistant	$17,000.00
Staff Assistant	$14,000.00
Office Manager	$30,400.00
Administrative Assistant	$23,400.00
Receptionist/Secretary	$17,200.00
Research Assistant	$7,500.00
	$424,000.00

In addition to the above obligated staff positions, the Commission acquires, on a non-reimbursable basis, senior staff employees on loan from other Government agencies. Our press and information officer comes from the United States Information Agency and, at the present time, the Commission utilizes the services of an experienced consular officer on detail from the Department of State who acts as an advisor and consultant to the staff on immigration, refugee and asylum matters and serves as liaison with the State Department and the Immigration and Naturalization Service.

11.3 Positions Other Than Permanent

Summer Interns (4 Students/3 Months)	$12,000.00
Senior Interns (Research Assistants)	$ 8,000.00
	$20,000.00

PERSONNEL BENEFITS

The requested figure of $36,000 for personnel benefits covers the Commission's employer contributions to the following programs:

Congressional Retirement (7-1/2%)	$25,500.00
Health Benefits	$7,000.00
Life Insurance	$300.00
Medicare	$3,200.00
	$36,000.00

TRAVEL AND TRANSPORTATION OF PERSONS

One of the primary goals of the Commission is to promote wider public understanding of the provisions of the Helsinki Final Act, particularly with regard to human rights and human contacts. It is anticipated that an estimated $20,000 will be needed to cover domestic travel expenses during FY 1985. Commissioners and Commission staff are often invited to speak before private organizations, colleges, associations and other interested groups on such topics as human rights, military security issues, the follow-up conferences to the Madrid Review Meeting, and basically on all aspects of the Helsinki Accords.

In addition, hearing witnesses and individuals who are requested to appear before the Commission in an official capacity can be reimbursed for their travel expenses under this category. When necessary, interpreter and translation fees can also be authorized by the Chairman.

Overseas travel by Commissioners and Commission staff is covered under Section 502(b) of the Mutual Security Act of 1954. For the purposes of this Act, the Commission is deemed to be a standing committee of the Congress and is entitled to the use of funds in accordance with this section pursuant to Public Law 94-534 dated October 17, 1976.

RENT, COMMUNICATION AND UTILITIES

This estimate of $58,000 covers costs of services within the office such as rental and maintenance costs for word processing equipment, xerox copier and telephone answering machine; telephone service (local, long-distance and WATS line); telegrams; postage and other office related expenses.

Word Processing Equipment	$30,600.00
Xerox Copier Monthly Maintenance	$7,800.00
Telephone Service	$13,200.00
Postage/Telegrams	$4,800.00
Other Services	$1,600.00
	$58,000.00

PRINTING AND REPRODUCTION

It is anticipated that $50,000 will be needed to cover the cost of printing Commission material such as hearings, reports, surveys, questionnaires, brochures and other publications. Also included is the cost of printing official stationery, franked envelopes, press releases and the bi-monthly CSCE Digest.

Hearings (Printed by GPO) Five hearings @ approximately $5,000 each	$25,000.00
Envelopes, Stationery, etc.	$5,000.00
Other Printing: brochures, press releases, CSCE Digest, newsletters, reports and materials	$20,000.00
	$50,000.00

OTHER SERVICES

An estimated $35,000 will be needed to cover the costs for contract service for administrative and personnel assistance from the General Accounting Office and other consultant fees. It also includes the cost of stenographic services for Commission hearings and meetings as well as the service of translators, if necessary, for foreign-language documents.

Contract for Administrative Services General Accounting Office	$10,000.00
Consultant Fees	$20,000.00
Miscellaneous: Stenographic and photographer services for hearings; translation fees	$5,000.00
	$35,000.00

SUPPLIES AND MATERIALS

This estimate of $10,000 covers the cost of operating supplies and materials including subscriptions to newspapers, periodicals, magazines and other pertinent publications, books and research material.

Office Supplies	$7,000.00
Publications: Newspapers, books, periodicals, research material	$3,000.00
	$10,000.00

ANNUAL REPORT
OF THE
COMMISSION ON SECURITY AND COOPERATION IN EUROPE
FOR THE PERIOD COVERING JANUARY 1 THROUGH DECEMBER 31, 1983

A REPORT TO CONGRESS

I. INTRODUCTION

In accordance with Section 6 of Public Law 94-304, dated June 3, 1976, this report describes the activities of the Commission on Security and Cooperation in Europe for the period January 1, 1983 through December 31, 1983.

Commission Background

Created in 1976 as an independent agency, the Commission on Security and Cooperation in Europe is charged with the responsibility of monitoring and encouraging compliance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (CSCE), an agreement signed in 1975 in Helsinki, Finland, by the heads of state of the United States, Canada, the Soviet Union and 32 European countries. The Commission was mandated to focus particularly on the humanitarian provisions of the Helsinki Final Act. In carrying out its mandate, the Commission has been extremely active in documenting violations of the Final Act, in promoting public awareness and implementation of its provisions, and in formulating and executing United States government policy on these issues.

Composed of 15 Legislative and Executive Branch officials, the Helsinki Commission, as it is commonly known, is chaired by Representative Dante B. Fascell. Senator Robert Dole serves as Co-chairman. Other 1983 Congressional members include Senators Orrin Hatch, John Heinz, Alfonse D'Amato, Claiborne Pell and Patrick Leahy; and Representatives Sidney Yates, Timothy Wirth, Edward Markey, Don Ritter, and Christopher Smith. Executive Branch Commissioners-observers for 1983 were Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs and Richard Norman Perle, Assistant Secretary of Defense for International Planning. The Commerce Department position remained vacant during 1983.

Staffing

The Commission staff consists of 15 permanent positions, volunteer semester students from American University, paid summer interns and personnel on loan from other government agencies. At the present time, the staff consists of the Staff Director and General Counsel, Mr. R. Spencer Oliver; Deputy Staff Director, Samuel G. Wise; nine staff assistants with various country responsibility and fluency in languages such as Italian, Spanish, French, Ukrainian, German, Russian and Serbo-Croatian; and four administrative/clerical positions.

Funding

Under Public Law 94-304, amended by the Foreign Service Relations Act of 1979 (Public Law 95-426), $550,000 is authorized to be appropriated for each fiscal year until expended to meet the expenses of the Commission. In addition, under Title IV, Miscellaneous Provisions, of Public Law 96-60, there is authorized and appropriated each fiscal year $6,000 which may be used for official reception and representation expenses.

II. THE MADRID MEETING

The second follow-up meeting of the Conference on Security and Cooperation in Europe began in Madrid, Spain, on November 11, 1980 and, because of deep East-West differences, did not end until September 9, 1983. Once again, preparations for and participation in the Madrid Meeting consumed a significant portion of the Commission's time and resources in 1983.

The Commission's Role

Because of the nature and extent of Commission expertise, both Commissioners and staff members were integrated into the United States delegation to the Madrid Meeting along with representatives from the Departments of State, Commerce, Defense, the Arms Control and Disarmament Agency and the U.S. Information Agency. Representative Dante B. Fascell and Senator Robert Dole served as Vice-Chairmen of the U.S. delegation and all Commissioners were members of the delegation. Commission Staff Director, R. Spencer Oliver, was the Deputy Chairman, second-in-command to Ambassador Max M. Kampelman, who was appointed by President Reagan to lead the U.S. negotiators. A Congressional delegation, led by Commission Chairman Dante B. Fascell and including then Co-Chairman Senator Claiborne Pell and other Commissioners, travelled to Madrid during the first weeks of the meeting to participate in the deliberations. In November, 1982, Commission Co-Chairman Senator Bob Dole and Commissioner Orrin Hatch took part in the proceedings. The last Congressional delegation, led by Chairman Fascell, travelled to Madrid to attend the closing ceremonies of the meeting from September 7-9, 1983. Included in this delegation were Commissioner Edward Markey and three other members of Congress.

The Madrid Meeting was in session for most of the period between its resumption in February 1983 and its conclusion in early September. The sixth phase of the meeting began on February 8 and continued until March 25. Negotiations resumed on April 19 and were more or less completed by July 15 with the exception of the traditionally difficult problem of resolving Malta's demands on Mediterranean security. Since the Madrid Meeting, by CSCE rules of procedure, could not end until there was consensus by all 35 signatory countries, the meeting continued in intermittent sessions between July 15 and early September, until Malta also consented to end the meeting. This occurred immediately prior to the scheduled concluding session of the conference (September 7-9, 1983) which was attended by the Foreign Ministers of most participating states.

During 1983 several members of the Commission staff were fully engaged in the negotiations in Madrid as they had been throughout the meeting. Commission staffers represented the United States on various negotiating groups at the Madrid Meeting, served as the special assistant to Ambassador Kampelman, acted as the press, Congressional and public relations for the delegation, handled all the delegation's correspondence, researched and drafted speeches, prepared and delivered statements, provided translation services, drafted reporting cables, and provided much of the administrative and secretarial support for the delegation.

Back-up support from those Commission staffers who remained in Washington during the Madrid sessions was vital to the delegation. Staff members provided the delegation with research on particular issues -- responding to inquiries and requests from the delegation on a regular basis -- and supplied updated information necessary for speeches and statements. Commission staff members also participated in the periodic strategy sessions of the inter-governmental steering group on CSCE held at the Department of State. Commission staffers in Washington regularly briefed Commissioners, other Members of Congress and their staffs, and representatives of the press and private organizations on the developments at the Madrid Meeting.

While the Madrid Meeting was in recess, the Commissioners and staff played an active role in developing U.S. policy and tactics toward the meeting and participated in numerous consultations with representatives from other Helsinki states, in particular with the Western allies at NATO headquarters in Brussels and in various European capitals. Staff members continued to handle correspondence relating to the meeting and to help prepare material for its next phase. Periodically throughout 1983, the staff continued its practice of issuing updates on the status of the meeting which were sent to Commissioners and other interested Members of Congress.

During the final phase of the meeting, on July 21, 1983, the Commission held a public briefing by U.S. delegation Chairman, Ambassador Max Kampelman, on the concluding document of the Madrid Meeting and its significance. This meeting was attended by Members of Congress, Congressional staffers and representatives from non-governmental organizations and the media. In November 1983, the Commission issued a report on Madrid containing an analysis of the meeting together with an assessment of the 38-page concluding document adopted at its close.

The Negotiations

When the Madrid Meeting reconvened on February 8, 1983, all of its energies were devoted to the adoption of a balanced and substantive concluding document. In the fall of 1982, the NATO allies had introduced a number of amendments to the draft concluding document presented by the Neutral and Non-aligned states (NNa) which took into account the Polish situation, the continuing occupation of Afghanistan and the dismal Eastern human rights record. While formally agreeing to negotiate on them, the East rejected many of these amendments out of hand, while offering minimal concessions on the others.

In March 1983, the NNa countries launched their second effort at a compromise draft which omitted important Western proposals and which the Western countries found especially lacking in the human rights dimension. While providing for a post-Madrid experts meeting on human rights and some improvements in the area of family reunification, the new NNa paper contained neither an experts meeting on human contacts nor adequate references to certain other human rights provisions which the West insisted would have to be part of a balanced and substantive concluding document.

After prolonged negotiations, on June 17, 1983, the Spanish Prime Minister, acting in his capacity as leader of the host country, launched a further compromise initiative which met the key U.S. demand for an experts meeting on human contacts. On this basis, agreement was reached on July 15 by all the participating states, except Malta, on a 38-page concluding document. The agreement came as a result of a surprise decision from Moscow, reversing the previous Soviet position of adamant opposition to an experts meeting on human contacts.

The only remaining obstacle in the way of formal adoption of the Madrid concluding document was the obstinate refusal of Malta to add its agreement unless its demand for a special meeting on Mediterranean security was accepted. Such a meeting was strongly opposed by a majority of participating states, which feared that it would become dominated by Middle East issues outside the purview of CSCE. Nevertheless, Malta stubbornly insisted on its proposal until September 6 when, under the pressure of the impending arrival of Foreign Ministers for the final session, it abruptly accepted a Swedish compromise proposal dropping the security meeting idea entirely.

The final three days of the Madrid Meeting -- September 7, 8 and 9 -- were devoted to closing speeches delivered in all but a few cases by Foreign Ministers of the thirty-five countries. The character of the meeting during these last few days was abruptly transformed into an atmosphere of sharp confrontation following the destruction of a Korean commercial airliner by Soviet military aircraft. The resultant loss of 269 innocent lives, including a U.S. Congressman and other U.S. citizens, sent shock waves around the world and cast a heavy pall over the Madrid Meeting.

The speeches by U.S. Secretary of State George Shultz and other Western Foreign Ministers, both NATO and NNa, were replete with sharp condemnations of this brutal action. The response of Soviet Foreign Minister Gromyko, who not only defended the action but threatened future "intruders" with the same fate, only served to increase the tension and the exchange of recriminations. The long-heralded bilateral meeting at Madrid between Shultz and Gromyko, which had been widely viewed as an occasion to reduce hostility and to move forward in the area of arms control, concentrated, at U.S. insistence, on the airliner incident and other Soviet human rights violations.

Despite the inordinate length of the Madrid Meeting and its down-beat, tense conclusion, it served U.S. interests in a number of significant ways. It helped to focus world-wide attention on Soviet transgressions in Afghanistan and Poland and in the area of human rights. It solidified unity among the Western nations, including the Neutral and Non-Aligned countries on most issues, in the face of Eastern intransigence. It produced agreement on a lengthy concluding document which, in most respects, met Western concerns both in the area of military security and in the field of human rights. And, finally, it functioned as an open channel for East-West communications during a period of rising international tensions.

III. MONITORING COMPLIANCE

Mandated by its enacting legislation to pay particular heed to the humanitarian provisions of the Helsinki Final Act, the Commission devotes considerable time and attention to research of violations of these provisions in Warsaw Pact countries. The Commission receives a steady stream of letters and information on human rights problems from individuals, private and governmental organizations in the United States and Europe, as well as from various unofficial citizens' groups and individuals in the Warsaw Pact nations. This material is augmented by State Department cables, Foreign Broadcast Information and Joint Publications Research Service translations of official government statements, East and West European and Soviet media, and relevant reports from Western and emigre press.

This massive documentation on human rights problems in the Warsaw Pact countries is organized into two kinds of files: issue files, including topical reports on national, religious, cultural, political, civil, ethnic, social and economic problems; and individual case files, including information on 775 individual Soviet prisoners of conscience. These files on human rights problems are updated on a regular basis as new information becomes available from various sources.

These extensive and well organized files on human rights issues and individual prisoners of conscience are used extensively by the Commission staff for researching reports and special projects, preparing background materials for hearings, providing information for numerous speeches by Commissioners and, during the past three years, by the U.S. delegation to the Madrid Meeting, responding to requests from the public, Congress, the media and various researchers, and compiling briefing materials for Congressional delegations.

During 1983, special human rights projects included: the updating of lists of imprisoned Soviet peace activists, labor union activists and members of the Soviet Helsinki Groups; continuing work on the translation of 125 documents of an independent peace group in the USSR (the Moscow Trust Group); nominating Soviet and East European human rights activists, including Lech Walesa, for the 1983 Nobel Peace Prize; providing information and assistance to governmental and private organizations on various Helsinki-related issues, including the fiftieth anniversary of the Ukrainian famine; translating and preparing documentation on Soviet non-delivery of mail for a Congressional hearing; conducting a briefing for the members of the U.S. delegation to the International Labor Organization on the situation of unofficial labor unions in the USSR; and participating in an intra-governmental panel which prepared the U.S. submission to the International Labor Organization's Commission of Inquiry on Poland.

Much of the Commission staff's daily work has focused on individual cases falling under the Final Act's human contacts provisions such as family reunification, binational marriage, and travel barriers between East and West. The cases, which form a substantial portion of the Commission's total casework, are handled by a full-time caseworker in collaboration with country/area officers and with the assistance of student interns. Most incoming casework correspondence comes from individuals and organizations trying to facilitate the emigration of their relatives, friends or colleagues from the Soviet Union and Romania, and Members of Congress who forward constituent mail for reply.

The staff maintains extensive files on thousands of such cases and numerous staff hours are spent on casework correspondence. The Commission staff compiles and regularly updates lists of unresolved human contacts cases and maintains contact with our embassies in Eastern Europe in order to ascertain the most current information on them. Periodically, the Commission presents lists of unresolved human contacts cases to representatives of East European Governments. The Commission staff also spends time counseling and advising family members, concerned individuals, representatives of private groups and Congressional staffs on possible strategies to resolve human contacts cases.

Responsibility for following compliance and casework issues for all signatory countries are divided among the various experts on the Commission staff. Following is information on the staff, outlining their major areas of responsibility:

R. Spencer Oliver, the Staff Director and General Counsel of the Commission, received his Juris Doctor degree from George Washington University in 1967. His regular duties include overall staff direction, guidance in carrying out projects and serving as the central contact with Commissioners and high-level personnel at the Department of State and other Government agencies.

Samuel Wise, the Deputy Staff Director, has been with the Commission since October of 1977. In addition to assisting in staff direction, his responsibilities include coordination with private groups and government agencies on U.S. compliance with the Helsinki Accords.

Senior Staff Analyst, Martin Sletzinger, follows developments in Bulgaria, Yugoslavia and Turkey, has primary responsibility for CSCE follow-up and military security issues and is an expert on CSCE procedures.

Yale Richmond, Senior Staff Consultant, deals with cultural, educational and scientific exchanges and information issues. He also works with the Commission press officer in putting out the CSCE Digest.

Staff Assistant, Catherine Cosman, has overall responsibility for human rights, including national, religious, political, economic and ethnic dissent in the USSR. She is responsible for the compilation and editing of human rights documents from citizens' groups in the USSR and the Baltic states. In terms of U.S. compliance, she follows religious rights and prisoners' issues.

Staff Assistant, Lynne Davidson's primary country responsibility is Poland. Providing information on the new

Polish Helsinki Group, disseminating its documents, and liaison work with Solidarity support organizations and the Polish-American community are major aspects of her monitoring work. Ms. Davidson also remains a consultant on Romanian issues and works on Soviet research projects.

Staff Assistant Caseworker, Orest Deychakiwsky, has general responsibility for all emigration casework, including responding to inquiries from individuals, organizations and Members of Congress, on this issue. He also directs the interns who assist in casework and has a special involvement in Ukrainian issues.

Meg Donovan, Staff Assistant, is the Commission's chief liaison with NGOs and coordinator with Congressional offices on human rights issues. She has overall responsibility for human contacts and family reunification questions and follows emigration and related developments in the Soviet Union.

John Finerty, Staff Assistant, has main responsibility for all Russian translations, assists in the preparation of USSR human rights documents and reports, and maintains all Commission files on the USSR. He also follows the issues of non-delivery of mail and telephone communication in the USSR.

Brian Flora is a Foreign Service Officer on loan from the Department of State. He has country responsibility for Romania, Czechoslovakia and the GDR and follows developments relating to visa and immigration regulations.

Robert Hand, Staff Assistant, is responsible for monitoring compliance with the provisions of Basket II which deals with economic and scientific cooperation. This work includes involvement in the activities of the U.N. Economic Commission for Europe, and other forums relating to East-West trade. Mr. Hand also has country responsibility for Hungary.

Our press and information officer, Myron Hoffmann, is on loan from the U.S. Information Agency. His duties include editing press releases, liaison with the Washington press and preparing for Commission press conferences and briefings. One of his major responsibilities is editing the bimonthly CSCE Digest.

The administrative staff includes Deborah Burns, the Commission's Office Manager and Budget Officer; Barbara Edwards, the Administrative Assistant and Leslie Farrell, part time research assistant and librarian.

The Commission was assisted by a total of four students who participated in the American University Semester Program during the Spring and Fall of 1983. These students worked part-time and earned academic credit for their work. The Commission also utilized the services of four interns during the summer. These students assisted with casework and other special projects, including preparation for Commission hearings. Bob Hand, our new Staff Assistant dealing with Basket II issues, worked part-time during 1983 as an intern before becoming a full-time staffer in August.

IV. PUBLIC HEARINGS

The Commission conducted jointly with the House Foreign Affairs Subcommittee on Human Rights and International Organizations three public hearings in 1983 on various aspects of Soviet implementation of the Helsinki Final Act. Prior to each hearing, the Commission staff, in coordination with the Subcommittee, researched relevant issues and prepared briefing materials for the Commissioners and Members of the Subcommittee and background information for release to the press and public at the hearings.

Joint Hearing on the Plight of Jews in the Soviet Union

On June 23, 1983, the Commission and the Subcommittee heard testimony from witnesses refuting the claim by the Anti-Zionist Committee of the Soviet Public in Moscow that the "vast majority" of Soviet Jews who wished to emigrate had already done so. The witnesses who testifed on this important issue were: Elliott Abrams, Assistant Secretary of State for Human Rights; Theodore Mann, Chairman of the National Conference on Soviet Jewry; Lynn Singer, President of the Union of Councils for Soviet Jews; and Dr. William Korey, Director of Research at B'nai B'rith International Council and a consultant to the National Conference on Soviet Jewry.

Joint Hearing on Psychiatric Abuse in the Soviet Union

The Commission and the Subcommittee heard testimony from representatives of the international psychiatric community and the Administration on the use of psychiatry in the Soviet Union as a means of punishment for political dissenters. The seven-member panel of experts for the hearing on September 20, 1983 consisted of the following: Charles Fairbanks, Deputy Assistant Secretary for Human Rights and Humanitarian Affairs; Peter Reddaway, noted British authority on Soviet psychiatric repression; Dr. Walter Reich, psychiatrist with the Kennan Institute for Advanced Studies; Dr. Harold Vysotsky of the American Psychiatric Association and also head of the APA Committee to Review Abuse of Psychiatry and Psychiatrists; Dr. Boris Zubok, former Soviet psychiatrist now affiliated with Columbia University; Dr. Harvey Fireside, national advisor to Amnesty International; and Dr. John Karlavich who had recently returned from the Soviet Union with the latest information on psychiatric abuse.

Joint Hearing on Forced Labor in the USSR

This November 9, 1983 hearing examined forced labor in the Soviet Union as a violation of international law, and analyzed the role it plays in the Soviet economy. The U.S. policy towards goods produced through forced labor was also considered. The witnesses were asked to comment on House Concurrent Resolution 100, sponsored by Commissioner Christopher Smith, which denounced Soviet use of forced labor. The witnesses invited to testify on this issue were: Mark Palmer, Deputy Assistant Secretary of State for European Affairs; William von Raab, Commissioner of U.S. Customs Service; Robert Searby, Deputy Assistant Secretary of Labor for International Labor Affairs; Tom Kahn, Assistant to the President of the AFL-CIO; Amy Young, Executive Director of the

International Human Rights Law Group; and Georgy Davydov, former Soviet political prisoner.

V. COMMISSION MEETINGS

The Commission held its first meeting of the 98th Congress on January 26, 1983 to review its planned activities for the year and to introduce the new Commissioners to the staff. Also, since Commission participation in the Madrid CSCE Review Meeting -- both at the staff-level and by Commissioners -- was expected to continue throughout the year, the Commission invited Ambassador Max M. Kampelman to hear his report on the status of the Madrid Meeting and to discuss prospects for its next phase.

On February 1, 1983, the Commission hosted a "Briefing on Madrid" for representatives of non-governmental organizations and other interested individuals. Among the more than 100 people in attendance were representatives from ethnic, religious and human rights organizations, former Public Members of the U.S. delegation to the Madrid Meeting and Members of Congress and their aides. Ambassador Kampelman addressed the gathering, giving his assessment of the Madrid Meeting and prospects for its future, and responded to questions from the audience.

The Commission held another meeting with Ambassador Kampelman on April 6, 1983 to discuss the Madrid Meeting before its resumption on April 19 after a short Easter break. Chairman Fascell and the Commissioners wanted to inform Ambassador Kampelman of the Commission's concerns regarding the revised version of a draft concluding document tabled by eight neutral and non-aligned countries just before the meeting recessed for the Easter break.

At the request of Commissioner Don Ritter, the Commission co-sponsored an informal meeting with the Human Rights Subcommittee of the House Foreign Affairs Committee on May 11, 1983 to hear two Afghan resistance leaders give their report on the continued Soviet military occupation of Afghanistan. The resistance leaders were Abdul Rahim of Jamiat Islami (the largest Afghan resistance group), who had information on contacts between the Afghan guerillas and Central Asian Moslems in the USSR, and Col. Mohammed Assil, former Kabul police officer, who had first-hand knowledge of Soviet involvement in the administration of the Kabul government and of Soviet participation in the widespread torture of prisoners. Ms. Roxanne Klass of the Afghanistan Information Center of Freedom House, the sponsors of the resistance leaders, provided an overview of the situation in Afghanistan.

On May 25, 1983, the Commission held an informal meeting with Jerzy Milewski, Director of the Brussels Coordinating Office of Solidarity, to hear his views on the status of Solidarity in Poland, its relationship to internal Polish affairs and to the Madrid CSCE Review Meeting. Mr. Milewski made a short introductory statement and answered questions from Commissioners, Commission staff, Members of Congress and representatives of various interested non-governmental organizations.

On July 21, 1983, the Commission hosted two briefings with Ambassador Kampelman on the Madrid CSCE Review Meeting. The first briefing was a closed session for the Commissioners as well as interested Members of Congress and their staffs. Ambassador Kampelman, accompanied by Deputy Assistant Secretaries of State for European Affairs John Kelly and Mark Palmer, gave his assessment on the soon-to-concluded Madrid Meeting. After his introductory statement, Ambassador Kampelman responded to questions. This closed session was followed by an open, public briefing by Ambassador Kampelman for members of interested non-governmental organizations.

Mr. Mikhail Pophadze, a native of Soviet Georgia and touring musician, who defected in Paris in May 1983, met with members of the Commission staff on October 26, 1983 to discuss current events in the Soviet Union. Mr. Pophadze, former member of a Georgian rock group, reported on, among other topics, the economic, religious, political and cultural situation in the Soviet Union.

An informal Commission meeting was held on October 27, 1983 with Aarne Vahtra, former Director of the Theatre Department in the Estonian Ministry of Culture, who defected in Paris in September 1982. Mr. Vahtra was accompanied by Ms. Anita Bedelis and Mr. Gunnars Meierovics of the Joint Baltic American National Committee. Mr. Vahtra spoke about the threats of Russification in the Baltic states and the manipulation of cultural activities for ideological and propaganda purposes. After his brief statement, Mr. Vahtra responded to questions from Commissioners, Congressional members of the Ad Hoc Committee on the Baltics and Ukraine, Congressional aides and members of the press.

VI. MISCELLANEOUS REPORTS AND ACTIVITIES

The reports and publications prepared in 1983 and available from the Commission are:

-- The Madrid CSCE Review Meeting. Released in November 1983, this report contains the Commission's comprehensive analysis of the Madrid Meeting which ended in September. The report analyzes the significance of the meeting as a whole as well as the concluding document adopted there. It also contains transcripts of several key speeches made by members of the U.S. delegation and the full text of the concluding document. In addition, a series of five interim reports were issued by the Commission during the course of the meeting at the close of each phase of negotiations. The last interim report was issued on January 14, 1983.

-- CSCE Digest. Issued periodically, the Digest is a detailed compilation of American and European media coverage of Helsinki-related topics. The Digest, which includes a section on Commission activities, is mailed to interested Members of Congress, governmental and private organizations and members of the media and general public in the United States and Europe.

-- Semi-Annual Reports by the President to the Commission on Security and Cooperation in Europe. These reports, initiated in December 1976, are required by legislation establishing the Commission and are prepared by the State Department. They provide, at six-month intervals, a comprehensive and detailed account of the record of implementation by CSCE signatories. The Commission disseminates these reports widely to the press, the public and official and private organizations in all signatory countries.

VII. COORDINATION AND POLICY: U.S. AND INTERNATIONAL

During 1983, the Commission continued to assist in the coordination of U.S. policy on CSCE issues. The Commission worked closely with other U.S. Government agencies to develop policies and took part in consultations with many of the other 34 countries participating in the Helsinki process.

The Commission worked closely with the Bureau of European Affairs of the Department of State. The Commission staff met frequently with State Department officers who were concerned with CSCE matters and with other Department officers whose work is related to CSCE issues, including the desk officers of most of the signatory states. The Regional Political Military Affairs Office in the European Bureau regularly provided the staff with copies of State Department cables related to CSCE matters.

Commission staff members and representatives of other organizations in the U.S. Government, including the Department of Defense, the Arms Control and Disarmament Agency, U.S. Information Agency and the Department of Commerce, participated actively with the Department of State in the formulation of policy positions relating to CSCE. In addition, the Commission staff did the initial drafts of several position papers and speeches used by the delegation at Madrid. Notably, the Commission staff authored several of the key new proposals tabled by the United States and its allies at the Madrid Meeting, which were eventually incorporated in the concluding document of the meeting.

The Commission also participated in consultations with other signatories to the Final Act. The principal forums for coordinating the positions of the allies on CSCE issues have been NATO headquarters in Brussels and informal meetings of the allied heads of delegations and their principal aides held in various West European cities. Commission staff members participated regularly in these consultative meetings.

Commission staff also participated in bilateral consultations in the U.S. with several CSCE signatories. In addition, staff members continued regular contacts with Embassy officials from several CSCE states including the FRG, France, Turkey, Switzerland, Yugoslavia, Romania and Hungary.

VIII. CONGRESSIONAL RELATIONS

Although the Commission is an independent agency with representation from the Executive Branch, the majority of Commissioners are Members of Congress and the Chairman is appointed by the Speaker of the House. As a result, the Commission maintains a special relationship with the Congress and works closely with individual Members, Committees, Subcommittees, and the Congressional Research Service of the Library of Congress.

In 1983, the Commission staff regularly responded to Congressional inquiries regarding the CSCE process and the Madrid Meeting, as well as issues affecting East-West relations and human rights in Eastern Europe. In July 1983, the Commission held a closed briefing for Members of Congress and their staff on the status of the Madrid Meeting.

The Commission staff also filled many requests for information on the status of individual cases. In addition to supplying this information, the Commission staff suggested actions a Member might take, provided materials for the preparation of speeches and statements for the Congressional Record and drafted letters or statements for the Member's use. If the staff was unable to furnish the necessary information, it referred the Member's office to the appropriate private organization or government agency.

The Commission also functioned as a clearinghouse for information about Congressional activities on U.S.-European human rights and other Helsinki-related issues. Often, Congressional staffers contacted the Commission to inquire what other Congressional offices had been active in a particular case and what actions had been taken on behalf of that case. Many offices routinely send the Commission copies of letters they have sent or statements they have made regarding individual cases so that the Commission can keep abreast of these efforts and be better able to inform other offices.

The Commission worked closely with, and provided information to, several Congressional human rights groups in 1983 including the Congressional Human Rights Caucus, the Advisory Council on Religious Rights, the Interparliamentary Group on Human Rights in the Soviet Union, the Friends of Human Rights Monitors, the Ad Hoc Committee on the Baltics and Ukraine, and the 98th Congressional Class for Soviet Jewry.

The Commission supplied background and briefing materials to Members of Congress who travelled to the Soviet Union and Eastern Europe in 1983 and, in several instances, conducted briefings for Congressional delegations prior to their departure. The Commission also provided briefing materials for Members participating in interparliamentary groups such as the North Atlantic Assembly and the European Parliament. Commission staffers worked with the staff of the House Foreign Affairs Committee in the preparation of and participation in the Fifth Interparliamentary Conference on European Cooperation and Security in Budapest in May 1983. Commission staff also accompanied the U.S. delegation to the 1983 meetings of the U.S.-European Parliament.

In Madrid, the Commission staff acted as the Congressional relations officers for the U.S. delegation and had complete responsibility for visiting Members and Congressional staffers. The Commission Chairman led a Congressional delegation to Madrid for the September 1983 closing ceremonies of the three-year-long Madrid Meeting.

While the Commission has no legislative authority, the Commission staff served as a resource for Members of Congress, their staffs and Committee staffers in the initiation and drafting stages of resolutions dealing with CSCE, human rights and related issues, such as S. Con. Res. 80 on Baltic self-determination and H. Con. Res. 63 on the plight of Soviet Jews. The Commission -- through public hearings -- provided a forum for Members to express their views on many Helsinki-related issues and, where appropriate, held joint hearings with legislative Committees of the Congress. In addition, the Commission staff assisted Committee staffs of the House and Senate in the preparation of hearings by the Committees on a variety of issues, including Soviet non-delivery of mail and the commemoration of the 1932-33 Ukrainian famine.

The Commission played a pivotal role in the 1983 Congressional review of the eligibility of Hungary and Romania to receive Most-Favored-Nation (MFN) trading status in conformity with the 1974 Trade Act's Jackson-Vanik provisions. As part of its mandate to monitor and promote compliance with the humanitarian provisions of the Final Act, the Commission collected human rights information on Hungary and Romania pertinent to the MFN review and provided it to the relevant Executive Branch agencies, Congressional offices and the Subcommittees on Trade of the House and Senate which conduct hearings on the subject annually. Both the Commission Chairman and Co-chairman submitted testimony at the MFN hearings and the Commission staff prepared speeches, testimony and briefing materials on this issue for many other Members of Congress. When, in 1983, Romania imposed an "education tax" on would-be emigrants, the Commission helped to organize effective Congressional protest.

Commission publications are available to all Congressional offices and hearing notifications are published in the Congressional Record so that interested Members will be kept informed of the Commission's activities.

IX. COOPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS AND OTHER PUBLIC CONTACTS

Non-governmental organizations (NGOs) are a primary source of information for the Commission as well as the major channel through which the Commission publicizes its work. The Commission, therefore, keeps in close and regular contact with representatives of the various private groups interested in CSCE. NGO representatives receive all Commission publications and press releases and are invited to attend Commission meetings and hearings. On a less formal basis, Commissioners and staff members meet and consult frequently with representatives of private organizations.

The Commission attempts to provide a forum for NGOs to express their views by inviting private witnesses to testify and submit statements at Commission public hearings. Often, NGOs provide the impetus for the hearing. The Commission, by maintaining close contacts with the NGOs, is geared to bring the particular concerns of private groups to government attention thus making government CSCE policy more responsive to non-governmental organizations and government information more accessible to them.

Throughout 1983, Commission staff members continued to serve as the U.S. delegation's liaison with any NGO representatives and visitors who attended sessions of the conference. When appropriate, briefings were arranged and meetings held with U.S. and other delegation leaders. The Commission staff prepared special briefing books for these individuals and provided them with Commission materials when requested.

The Commission staff kept the NGO community informed of developments at the Madrid Meeting throughout 1983. While the meeting was in session, a section on the negotiations was a regular feature in the Commission publication of the CSCE Digest which is mailed to several hundred private organizations. The final report on the Madrid Meeting was sent to a larger audience of several thousand including numerous NGOs in the United States and Europe. Commission staffers also maintained extensive personal contacts with NGO representatives in order to keep them up-to-date on the meeting. In February and again in July, the Commission hosted briefings for NGO representatives with Ambassador Max Kampelman, chief U.S. negotiator at Madrid.

During 1983, the Commission participated in many conferences, seminars, assemblies and meetings -- on topics ranging from human rights to military security -- hosted by private organizations, universities and professional associations both in the United States and abroad. On numerous occasions, Commissioners and staff members presented reports and papers, delivered speeches and participated in panel discussions. During 1983, Commission staff took part in such activities at numerous universities, including the Russian Research Center at Harvard University, the Johns Hopkins School of Advanced International Studies, the Georgetown Center for Strategic and International Studies, Indiana University and the Kennan Institute for Advanced Russian Studies at the Wilson Center.

The Commission was the recipient of the 1983 Freedom Award presented by Christian Solidarity International. In recognition of his work in the field of human rights, Chairman Fascell received the 1983 Henry M. Jackson Friend of Freedom Award from the Coalition for a Democratic Majority.

X. MEDIA ACTIVITIES

The main periodical publication of the Commission is the CSCE Digest which is a detailed compilation of significant U.S. and European media coverage of Helsinki-related topics as well as staff studies on selected issues. The CSCE Digest also includes a section on Commission activities and is mailed to interested Members of Congress, governmental and private organizations, media representatives and the general public in the United States and Europe. Selected Foreign Broadcast Information Service (FBIS) daily translations of media in the Soviet Union, Eastern and Western Europe are included in the Digest as are articles relevant to the CSCE process and East-West relations.

The Commission maintained extensive contacts with media representatives of human rights organizations and groups concerned with national, ethnic and religious rights. Such organizations themselves publish newspapers, journals and information bulletins and have welcomed information on Commission activities, general information on human rights issues and translations of samizdat documents by the Commission staff.

The Commission has also worked closely with the media elements of U.S. government agencies -- especially the appropriate language services of the Voice of America, the Press Service (Wireless File) of the United States Information Agency, and the news staffs of Radio Free Europe and Radio Liberty. These organizations are vital to the Commission's work since they carry our messages to East European and Soviet audiences whose access to uncensored information is restricted by their own governments. VOA, RFE and Radio Liberty gave extensive coverage to Commission activities with special emphasis on public hearings and the Madrid CSCE review conference, at which all three news organizations maintained permanent correspondents.

Throughout 1983, Commission staffers maintained extensive contacts with media representatives who recognize the Commission as an authoritative source for background material on human rights issues and specific cases. A number of articles written by reporters were based totally or in part on Commission materials.

A number of articles by Chairman Fascell dealing with the Helsinki Accords, Soviet practices and abuses of human rights and other CSCE topics appeared in major U.S. newspapers in 1983. Commissioners and staff were interviewed for a number of articles and appeared on both radio and television programs. One Commission staffer is a regular participant in the public affairs program "In the Public Interest," carried by some 300 radio stations. The continuing Madrid Meeting, the situation in Poland, the Soviet-West European pipeline dispute, the continued Soviet occupation of Afghanistan, and the Korean airline disaster focused media attention on the Helsinki process and led to numerous inquiries concerning the role of the Commission and the prospects for the future of the Helsinki process.

The Commission staff was especially active in contacts with the media at the Madrid Meeting. Throughout 1983, a Commission staffer acted as the U.S. delegation press spokesman. Duties included regular, daily briefings of the international press, assisting in the drafting of speeches, preparing press releases, arranging press interviews for Ambassador Kampelman, distributing texts of U.S. delegation documents, and setting up press conferences for U.S. officials including a Congressional delegation led by Commission Chairman Dante Fascell.

On July 21, the Commission held an informal meeting in Washington, chaired by Representative Fascell for the purpose of briefing the media as well as other interested groups on the outcome of the Madrid Meeting. Ambassador Max Kampelman, chairman of the American delegation at Madrid, gave an assessment of the draft concluding document, and issued a written analysis of it. The media were strongly represented at this public briefing, and parts of Ambassador Kampelman's remarks were carried by cable television. The written assessment, which was made available to the press by the Commission, formed the basis for numerous articles which subsequently appeared in major U.S. newspapers.

More than a dozen press releases were issued in Washington by the Commission during 1983. They included notices of Commission hearings, protest of Romania's imposition of an 'education tax' intended to inhibit emigration, and support for pro-Solidarity demonstrations in Poland.

HR 4504 RFS

II

98TH CONGRESS
2D SESSION

H. R. 4504

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, FEBRUARY 6), 1984

Received; read twice and referred to the Committee on Foreign Relations

---

AN ACT

To provide that the chairmanship of the Commission on Security and Cooperation in Europe shall rotate between members appointed from the House of Representatives and members appointed from the Senate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3 of the Act entitled "An Act to establish a Commission on Security and Cooperation in Europe", approved June 3, 1976 (22 U.S.C. 3003), is amended to read as follows:

"SEC. 3. (a) The Commission shall be composed of fifteen members as follows:

"(1) Six Members of the House of Representatives appointed by the Speaker of the House of Representatives. Four Members shall be selected from the majority party and two Members shall be selected, after consultation with the minority leader of the House, from the minority party.

"(2) Six Members of the Senate appointed by the President of the Senate. Four Members shall be selected from the majority party of the Senate, after consultation with the majority leader, and two Members shall be selected, after consultation with the minority leader of the Senate, from the minority party.

"(3) One member of the Department of State appointed by the President of the United States.

"(4) One member of the Department of Defense appointed by the President of the United States.

"(5) One member of the Department of Commerce appointed by the President of the United States.

"(b) At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate Members as Chairman of the Commission. At the beginning of each even-numbered Congress, the Speaker of the House of Representatives shall designate one of the House Members as Chairman of the Commission.

"(c) At the beginning of each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the House Members as Cochairman of the Commission. At the beginning of each even-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate Members as Cochairman of the Commission.

"(d) A member of the Commission who is the chairman of a standing committee of either House of the Congress shall not be eligible to serve as Chairman or Cochairman of the Commission.".

(b) Section 7(a) of such Act (22 U.S.C. 3007(a)) is amended to read as follows:

"SEC. 7. (a) There is authorized to be appropriated to the Commission for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Such appropriations shall be disbursed on vouchers approved (1) jointly by the Chairman and the Cochairman, (2) by a majority of the members of the personnel and administration committee, or (3) by a majority of the members of the Commission.".

(c) Section 7 of such Act (22 U.S.C. 3007) is amended by adding at the end thereof the following new subsection:

"(d) Foreign travel for official purposes by Commission members and staff may be authorized by either the Chairman or the Cochairman.".

(d) Section 8 of such Act (22 U.S.C. 3008) is amended to read as follows:

"SEC. 8. The Commission shall have a personnel and administration committee composed of the Chairman, the Cochairman, the senior Commission member from the minority party in the House of Representatives, and the senior Commission member from the minority party in the Senate. All decisions pertaining to the hiring and firing and fixing of pay of Commission staff personnel shall be by a majority vote of the personnel and administration committee, except that (1) the Chairman shall be entitled to appoint and fix the pay of the staff director and the Cochairman shall be entitled to appoint and fix the pay of his senior staff person, and (2) the Chairman and Cochairman each shall have the authority to appoint, with the approval of the personnel and administration committee, at least four professional staff members who shall be responsible to the Chairman or the Cochairman, as the case may be, who appointed them. The personnel and administration committee may appoint and fix the pay of such other staff personnel as it deems desirable. All staff appointments shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.".

(e) Such Act is further amended by adding at the end thereof the following new section:

"SEC. 9. (a) For purposes of pay and other employment benefits, rights, and privileges and for all other purposes, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of title 5, United States Code.

"(b) For purposes of section 3304(c)(1) of title 5, United States Code, staff personnel of the Commission shall be considered as if they are in positions in which they are paid by the Secretary of the Senate or the Clerk of the House of Representatives.

"(c) The provisions of this section shall be effective as of June 3, 1976.".

(f) The amendments made by this Act shall take effect at the beginning of the first Congress which begins after the date of enactment of this Act, except that the amendment made by subsection (e) shall be effective as of June 3, 1976.

Passed the House of Representatives February 7, 1984.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

FEDERAL MARITIME COMMISSION

[CLERK'S NOTE.—The following is testimony submitted for the record on behalf of the fiscal year 1985 budget request of the Federal Maritime Commission:]

April 5, 1984

The Honorable Paul Laxalt
Subcommittee on Commerce, Justice, State,
The Judiciary, and Related Agencies
Committee Appropriations
United States Senate
Washington, D. C. 20510

Dear Senator Laxalt:

The Federal Maritime Commission has prepared its budget estimates for the fiscal year 1985. As Chairman of the Senate Appropriations Committee's Subcommittee on Commerce, I thought you should know what that budget comprises. In light of the recent enactment of the Shipping Act of 1984, this budget should be of particular interest to you in that it reflects organizational and operational changes necessitated by new provisions in the law. For the most part, we have anticipated our fiscal budgetary requirements under the new law and have planned accordingly. This submission is fully consistent with the President's budget as submitted to the Congress in January.

Our fiscal year 1985 budget estimates in the amount of $12,292,000 provide funding for 239 total workyears of employment. Including pay supplementals, this is an increase of $1,346,000 above the $10,946,000 budget for 1984. This increase comprises $455,000 for personal services; $415,000 for SLUC rates increased by the General Services Administration; $121,000 to enable the Commission to complete its acquisition of word processing equipment for its field offices and replacement of obsolete equipment at headquarters; $105,000 for other services and supplies; and, $250,000 to enable the Commission to acquire and further develop necessary and relevant ocean shipping market information.

By way of background, market information in this context means the total percentage of cargo transported by individual steamship companies in the foreign commerce of the United States (market shares), as well as commodity-specific information for any given ocean trade. This information is critical to the statutory responsibilities of the Commission under the recently enacted Shipping Act of 1984 (P.L. 98-237). Under section 18 of this new law, the development of this data is mandatory.

Let me take this opportunity to give you an overview of the Commission's activities and accomplishments during this last fiscal year. The Commission is responsible for the regulation of ocean carriers in the U.S. foreign and domestic offshore trades. The FMC investigates discriminatory rates and practices among shippers, carriers, terminal operators, and freight forwarders operating in the U.S. ocean commerce; licenses independent ocean freight forwarders; provides passenger vessel certification and, until September, 1983, certified that vessels in U.S. waters were financially responsible for the the clean-up of pollution by oil and hazardous substances. This responsibility was transferred to the Department of Transportation in September 1983.

During fiscal year 1983, the Commission issued 330 final decisions. Of these, 58 were formal proceedings, 116 involved special docket applications, 143 were informal dockets involving shippers' small claims against ocean carriers, and 13 related to rulemaking proceedings.

The Commission collected a total of $1,562,000, which was subsequently deposited with the U.S. Treasury. This included $1,065,000 for fines and penalties related to various violations; $372,000 for water pollution application and certification fees; $67,000 for freight forwarder licensing fees; $30,000 for publications and reproductions; and $28,000 for special permission and special docket application fees. The revenue collected represents 13 percent of the Commission's 1983 operating expenses. Through the assistance of the FMC's Office of Informal Inquiries and Complaints, the shipping public was able to recover more than $185,000 directly from commercial entities.

As I have indicated, responsibility regarding certification of vessels for oil spill liability was transferred to the Department of Transportation in September of 1983. The Commission, together with OMB, hopes to realize similar benefits for the agency and the public in seeking transfer to the Coast Guard of the Commission's jurisdiction over passenger vessel operators under sections 2 and 3 of Public Law 89-777. This additional transfer is another step in the Commission's effort to better focus operations on fulfilling the FMC's primary mission, thus providing better, more consistent service to all segments of the industry and the regulated public. The Commission anticipates that this action will allow for a workforce reduction of two full-time positions and budget authority reductions of $71,000. The 1985 budget fully reflects these changes.

Several months ago, the Commission took the first step in what could amount to sweeping changes for the U.S. maritime industry and the filing of tariffs. In a public announcement, the Commission requested public comment on its plan to promote development of an automated tariff filing system by the private sector. It is envisioned that a paperless electronic system for the filing, storage, and retrieval of tariff information could realistically be developed to service the needs of the Commission, as well as to satisfy the needs of the many and varied interests that use this information in the conduct of U.S. foreign and domestic commerce. The development and operation of such a system would be subject to oversight by the FMC and, if legally feasible, undertaken at no expense to the Federal Government.

At the close of fiscal year 1983, the Commission initiated a Notice of Inquiry for the purpose of soliciting public comment on the regulation of ports and marine terminal operators under the Shipping Act, 1916. The issues to be addressed include the filing and approval of terminal agreements, the need for continued antitrust immunity for marine terminal operators, and the Commission's future role in marine terminal regulation.

The Commission has undertaken a major effort to modernize policies and regulations so that the Government minimizes unnecessary intervention in commercial shipping operations in the United States. The FMC is proud of its accomplishments during the past several years. It has been especially gratifying to achieve such operational and substantive progress while maintaining a high level of cost-consciousness and a program of fiscal austerity. The Commission is committed to the President's goal to reduce the growth in the size of the Federal Government and to bring spending by the Federal Government under control. Current programs have been fully reviewed and numerous activities have been diligently pursued to modernize the agency, better deploy the talent and experience available to the Commission, and prepare the FMC for new legislation and the sweeping changes that will result. Now, the Federal Maritime Commission has a more effective and efficient operation, one that is better prepared to fulfill the FMC's primary statutory mission. This has been accomplished well within budget and the agency continues to make the best use of the resources provided.

Should you have any questions regarding the Federal Maritime Commission's budget for fiscal year 1985, please do not hesitate to contact me at 523-5911. I sincerely appreciate the opportunity to make this information known to you and look forward to working closely together in the coming years.

Sincerely,

Alan Green, Jr.
Chairman

FEDERAL MARITIME COMMISSION

Summary of Budget Estimates:

	Positions 1/	Amount (Thousands)
Appropriation, Fiscal 1984	252	$10,756
Base Adjustments:		
Pending Supplementals:		
Pay Costs	---	190
Program	---	---
Subtotals, Supplements	---	190
Other Adjustments	---	---
Base for Fiscal 1985	252	$10,946
Fiscal Year 1985 increases	-1	1,346
Appropriation requested for Fiscal 1985	251	$12,292

1/ Represents permanent positions. Workyears authorized by OMB are 240 for fiscal year 1984 and 239 for fiscal year 1985.

FEDERAL MARITIME COMMISSION
Salaries and Expenses
($ in thousands)

Estimate by Budget Activity	1983 Actual Pos.	1983 Actual /WY.	1983 Actual Amt.	1984 Enacted Pos.	1984 Enacted /WY.	1984 Enacted Amt.	1984 Anticipated 2/ Pos.	1984 Anticipated 2/ /WY.	1984 Anticipated 2/ Amt.	Current 1985 Estimate Pos.	Current 1985 Estimate /WY.	Current 1985 Estimate Amt.
1. Formal Proceedings	72	66	$3,261	68	65	$3,344	68	65	$3,407	68	65	$3,778
2. Policy Planning & Intn'l. Affairs	9	8	316	9	9	302	9	9	309	9	9	356
3. Agreements & Trade Monitoring	27	26	979	25	25	966	25	25	988	25	25	1,114
4. Tariffs	53	45	1,660	53	46	1,743	53	46	1,775	52	45	1,915
5. Certification & Licensing	26	26	936	--	--	-- 1/	--	-- 1/	--	--	--	--
6. Hearings Counsel	16	13	702	14	13	619	14	13	633	14	13	715
7. Investigations	51	48	1,920	51	48	2,025	51	48	2,060	51	48	2,338
8. Resources Management	36	31	1,996	32	32	1,757	32	32	1,774	32	32	2,076
TOTAL	290	263	$11,770	252	238	$10,756	252	238	$10,946	251	237	$12,292
Part Time Employment	3/3			2/2			2/2			2/2		

1/ Transferred to Department of Transportation, September 1983.

2/ Includes any supplementals, rescissions, deferrals.

FIELD OFFICE BUDGET
New York, New York
($ in thousands)

	1983	1984	1985
Total Personal Services	$407	$407	$435
Travel	6	6	6
Administrative Expenses	75	82	85
Total	$488	$495	$526

FIELD OFFICE BUDGET
New Orleans, La.
($ in thousands)

	1983	1984	1985
Total Personal Services	$262	$263	$281
Travel	10	8	8
Administrative Expenses	32	34	33
Total	$304	$305	$322

FIELD OFFICE BUDGET
Miami, Florida
($ in thousands)

	1983	1984	1985
Total Personal Services	$88	$91	$97
Travel	2	2	2
Administrative Expenses	12	13	13
Total	$102	$106	$112

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

[CLERK'S NOTE.—The following is testimony submitted for the record on behalf of the fiscal year 1985 budget request of the Japan-United States Friendship Commission:]

PREPARED STATEMENT OF W. GLENN CAMPBELL
CHAIRMAN
JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Mr. Chairman and distinguished Members of this Subcommittee:

It is my privilege to testify before you for the first time on behalf of the Japan-United States Friendship Commission. As has been the case in the past, I have with me former Ambassador Richard Ericson, the Commission's Executive Director.

My two distinguished predecessors as Chairman, Professors John W. Hall of Yale and Robert E. Ward of Stanford, were Japan scholars, and led the Commission through the period when its programs were being developed with great skill and understanding. My own association with Japan is less extensive. I have, however, had a strong interest in Japan for over twenty-five years. I am an economist and for the past two decades have managed the affairs of a major academic research institution concerned with international affairs, including one of this country's most extensive library collections on modern Japan. Much of my background and experience is very pertinent to the Commission's task. In any event, I accepted the Chairmanship with every intention of discharging its responsibilities effectively.

During his trip to Tokyo last year, President Reagan said that the ties between Japan and the United States constitute "the most important bilateral relationship in the world bar none." This was not simply a rhetorical expression of transpacific friendship. The President was describing a relationship that has no counterpart for size, for complexity and variety, or for the rate at which its elements are growing. It is characterized by cooperation and competition, friendship and rivalry, understanding and suspicion. But however complex and confusing it may be, and however close or distant Americans and Japanese may be on any particular problem, the essential fact is that we have a massive and mutually advantageous association which must be preserved and, wherever possible, improved.

The Congress recognized this need almost a decade ago, when it passed the Japan-United States Friendship Act (PL 94-118), establishing the Commission as the only federal agency whose sole purpose is the improvement of understanding and friendship with a single foreign country. It also recognized the necessity to promote initiatives to expand the basis in each country for acquiring knowledge about the other and an appreciation of its cultural values as fundamental to the development of enduring mutual trust, respect and friendship at the national level. Bridging the vast cultural gap across which these two nations must communicate clearly remains a significant national goal, and it requires imaginative projects and a sustained effort in both directions. The Commission believes that it pursues a range of programs in fundamental areas which effectively use the resources available to contribute significantly to the achievement of this goal and which serve as catalysts in stimulating further activity.

The resources available are slim, given the magnitude of the task. To carry out its responsibilities in educational and cultural exchanges, the Congress in 1976 appropriated two endowments known collectively as the Japan-United States Friendship Trust Fund. These were denominated in both dollars and yen, and had a combined value of about $36,000,000 at the exchange rate then in effect. The initial dollar appropriation of $18,000,000 represented a portion of the funds Japan paid to the United States for certain American-built facilities on Okinawa under the reversion agreement and the yen appropriation of ¥3,941,112,777 represented a portion of the funds Japan paid to the United States for assistance rendered in the aftermath of World War II. These yen funds must be spent in Japan under the repayment agreement. Aside from the generous gift of $2,000,000 which then Prime Minister Suzuki presented to the Commission in 1981, the Fund has not been augmented.

The Act authorizes the Commission to invest the appropriated fund, and to retain, to invest and, subject to appropriation, to spend the annual interest earnings. It also authorizes expenditure of up to five per cent annually of the original principal of the Fund. The two funds are invested, as required by the Act, in obligations of the two governments. Through Fiscal Year 1982, which included the start-up period when outlays were low, expenditures totalled slightly less than the combined cumulative earnings of the two funds. However, the development of effective programs has put considerable pressure on the dollar fund in particular, and inflation has had its effect on both. Spending has accordingly exceeded earnings over the past several years.

At the end of Fiscal Year 1983, the appropriated dollar fund totalled $17,144,747, exclusive of the Japanese gift, and the yen fund ¥3,999,632,613 (equivalent to $16,205,967).

For Fiscal Year 1985, the Commission is requesting the appropriation of interest already earned and to be earned in the amount of $1,600,000 and the equivalent of $1,200,000 from the yen fund. This is $100,000 less from the dollar fund than was appropriated for Fiscal Year 1984. The Commission also anticipates spending up to $500,000 of the Japanese gift on the regional organizations programs for which it was donated. Should it be necessary, the Commission would also spend a portion of the appropriated trust fund principal, although it has decided in principle to keep such expenditures within 2.5 per cent, rather than to use the full authorized 5 per cent drawdown authority.

These funds will be used to administer the Commission and to fund programs in the four broad categories of activity which the Commission has defined. These are:

Japanese Studies for Americans
American Studies for Japanese
The Arts
Research and Programs for Public Education

Most of the funds will be spent on the first two categories, since the Commission believes that improving opportunities for scholars in the two countries to interact, to study and thus to expand their ability to teach about the other is essential to the Commission's task.

In supporting Japanese Studies for Americans, the Commission concentrates on long-range academic programs designed to strengthen teaching and broaden basic research opportunities in institutions of higher learning, and to train specialists in law, business, economics and journalism, where major deficiencies exist. In these areas, it fills demands not met by any other agency, federal or private. The language training, library acquisition, faculty research and curriculum development programs of American universities find the Commission's support unique and irreplaceable, and the Commission is confident that the students who benefit from these efforts, however indirectly, will be better prepared than their predecessors to manage our future relationships with Japan and to interpret Japan to the American people.

In its latest initiative, the Commission conducted a competition among graduate schools of business for three-year matching grants with which to introduce Japan-related material into their Master of Business Administration curricula. Two of the four successful applicants - Stanford and UCLA - propose to integrate Japan-related material into most of the courses required for the MBA degree; the other two - NYU and Cornell - will develop Japan-specific courses, require Japanese language training, arrange internships in Japan and offer an MBA with concentration on Japan or a joint MBA/MA degree in Asian Studies. It is apparent that other universities are interested in following one or the other of these examples.

The second category, American Studies for Japanese, includes support to Japanese universities for library and research center development, post-doctoral fellowships for research in the United States, major teaching and study seminars, support for scholarly publications, travel grants for scholars, and courses by visiting specialists. A peculiarity of Japanese higher education, the result of a traditional Euro-centrism, is the general lack of courses dealing with the United States in all but a few Japanese universities. The Commission's efforts to ameliorate this situation by offering to train an appropriate faculty member in exchange for a university commitment to assign the trainee to teach an American Studies course has begun to show results. Arrangements with three of Japan's leading universities have been made and more are likely to follow. This need is balanced in good part, of course, by the fact that 10-12,000 Japanese students are enrolled at any given time in American universities, giving many of Japan's future leaders an in-depth acquaintance with the United States which has no counterpart on the American side.

The third category, the Arts, has always been of major concern to the Commission. Since funds are limited, the Commission has emphasized assistance to artistic presentations that would not otherwise be financially viable, to extend the scope of or organize educational efforts around activities supported by other means, and to cooperate with other organizations and funding agencies. The Commission takes particular pride in its promotion of American scholarship on the arts of

Japan, and in the role it has played in introducing American theater and dance to the Japanese public.

The fourth category, Research and Programs for Public Education, is largely devoted to informing Americans about Japan. This is because developments in the United States are analyzed and discussed by Japan's information media and public figures to a far greater extent than is true of Japan in the United States. To rectify this imbalance, the Commission initiated a program in 1980 to develop a series of regional organizations, each of which would be responsible for coordinating programming for public education on Japan in a major population area of the country. Some of these are Japan-America Societies and some are general world affairs organizations, but in either case the concept is to fund several years of planned activity and professional management during which the organization is expected to expand its own resources and to develop a degree of interest in Japan programming sufficient to ensure that programming will be maintained after Commission support is withdrawn. The Japanese government provided its $2,000,000 gift in 1981 for this program. The understanding was that this money would be expended at the rate of $400-$500,000 per year and that the Commission would not decrease the level of its own support. Legislation enabling the Commission to invest this gift and spend the principal and earnings in the manner envisaged by the donor was not enacted until August 1982. In Fiscal Years 1981 and 1982, the Commission funded large increases in the program, and in Fiscal Year 1983 compensated by spending heavily from the Japanese gift. The program now assists two central resource agencies, ten Japan-America Societies, and six general international affairs organizations, and the public affairs program of one state university system. The Japanese gift funds will be exhausted during Fiscal Year 1986; thereafter, funding for this program will drop sharply unless new sources are found.

The fourth category also includes support for counterpart exchange activities by legislators, newsmen and school officials at the state/prefectural level, for public seminars and discussion on Japan-related issues, and for television programming. In the translation area, the Commission provides a grant to help finance the Translation Service Center in Tokyo, which sends translations of significant articles from the Japanese vernacular press to American newspapers. Finally, the Commission's program for binational academic research projects on current issues between the two countries currently supports three multi-year projects - one at The George Washington University on technology transfer to developing countries, one at Stanford on high technology industries, and one at Michigan on the effects of domestic legal laws on trade.

The Commission which supervises these activities includes representatives from both the public and private sectors. Currently, there are three Congressional members: Representative Conte and Senators Roth and Inouye. I would like to note here that the late Clement Zablocki was an especially valued colleague and a charter member of the Commission. His support and guidance will be sorely missed, but the Commission is confident that his successor, when appointed, will also take an active role. Dr. Daniel Boorstin, Librarian of Congress, serves as a Commissioner, and from the Executive Branch the membership includes the Director of the United States Information Agency, the Chairmen of the National Endowments for the Humanities and the Arts, and Assistant Secretaries of State and Education. From the private sector, there are seven distinguished representatives of business, the media, the arts, and higher education. The breadth of views thus represented ensures that the Commission's activities will be evaluated from many viewpoints, responsive to real needs, and not competitive with programs of other official or private agencies.

In conclusion, I would like to stress that today's immediate problems are not this agency's concern. We have no mandate to attempt to define or alter the thinking of either country about trade issues, defense problems, monetary and industrial policies. The Commission was established to promote the means by which two dynamic societies can, over the longer term, learn more about each other - what it is that they have in common and where they differ and why. This is a long and slow process, but there is a fundamental basis of good will on which to build. If the Commission's programs succeed, they will have created a background of mutual understanding and reciprocated respect against which any crisis or specific issue may be considered, and contained if it cannot be resolved.

SUBCOMMITTEE RECESS

Senator LAXALT. All right? We will stand in recess.

[Whereupon, at 11:41 a.m., Friday, May 25, the subcommittee was recessed, to reconvene at the call of the Chair.]

LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS

Page

Adelman, Kenneth L., Director, Arms Control and Disarmanent Agency 263
  Prepared statement 264
Agnos, Representative Art, assemblyman, 16th district, California, letter from 551
Amoroso, William S.S., Budget and Accounting Officer, Arms Control and Disarmament Agency 263

Banks, Senator J.B., 5th Senatorial District, Missouri, letter from 601
Bates, Representative Thomas H., assemblyman, 12th District, California, letter from 548
Baur, Donald C., Counsel, Marine Mammal Commission 437
Blondin, Carmen J., Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service, NOAA 295
Bogard, Donald P., President, Legal Services Corporation 487
  Letter from 501
  Prepared statement 488
Byrne, John V., Administrator, NOAA 295
  Prepared statement 306

Calio, Anthony J., Deputy Administrator, NOAA 295
Campbell, W. Glenn, Chairman, Japan-United States Friendship Commission, prepared statement 904
Cannon, Mark W., Administrative Assistant to the Chief Justice, U.S. Supreme Court 135
Carey, John J., Director, Office of Budget and Finance, NOAA 295
Carley, John H., General Counsel, Federal Trade Commission 71
Carlson, Norman A., Director, Federal Prison System 677
Carver, Harry, Comptroller, Small Business Administration 459
Carver, John A., National Association of Pretrial Services Agencies, letter from 247
Clark, Charles, Chief Judge, U.S. Court of Appeals for the Fifth Circuit 151
  Statement on behalf of the Budget Committee of the Judicial Conference of the United States 165
Colwell, William Lee, Executive Assistant Director for Administration, FBI 1
Connelly, Representative Lloyd G., assemblyman, 6th District, California, letter from 549
Crawford, Carol T., Director, Bureau of Consumer Protection, Federal Trade Commission 71

Daugherty, Dennis, Vice President—Operations, Legal Services Corporation 487
Donnelly, Cyril A., Budget Officer, U.S. Supreme Court 135
  Letter from 142

Edelman, Edmund D., supervisor, 3d district, board of Supervisors, County of Los Angeles, CA, letter from 540
Evans, Dr. William E., Chairman, Marine Mammal Commission 437
  Prepared statement 440

Fascell, Dante B., Chairman, Commission on Security and Cooperation in Europe, prepared statement 871
Fletcher, Joseph O., Assistant Administrator, Office of Oceanic and Atmospheric Research, NOAA 295

Page

Foley, William E., Director, Administrative Office of the U.S. Courts 151
  Letter from 249
  Prepared statement 155

Giacomini, John P., Director, Office of Management, Office of U.S. Trade Representative 105
Graham, Hon. Bob, Governor of Florida, prepared statement 689
Graham, Thomas, Jr., General Counsel and Director of Congressional Affairs, Arms Control and Disarmament Agency 263
Gramm, Wendy Lee, Director, Bureau of Economics, Federal Trade Commission 71
Green, Alan, Jr., Chairman, Federal Maritime Commission, prepared statement of 898
Greene, Senator Leroy F., California Legislature, letters from 531, 534, 535, 536

Hallgren, Richard E., Assistant Administrator, National Weather Service, NOAA 295
Hartley, Gregg, Legal Services Corporation, memorandum from 597
Harvey, James, U.S. district judge, Eastern District of Michigan 151
Hawkins, Hon. Augustus F., chairman, Committee on Education and Labor, U.S. House of Representatives, letter from 543
Henderson, Philip H., treasurer, Western Center on Law and Poverty, Inc., letters from 520, 552
Herrington, Ms. Lois Haight, Assistant Attorney General, Department of Justice 677
Hofman, Dr. Robert J., Scientific Program Director, Marine Mammal Commission 437
Hughes, Thomas A., Inspector-Deputy Assistant Director, Financial Management Branch, Administrative Services Division, FBI 677

Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement 315

Lambros, Judge Thomas D., U.S. district court, Northern District of Ohio, Report on Operation of the Jury System 204
Lawn, John C., Acting Deputy Administrator, Drug Enforcement Administration 677
Lehrer-Graiwer, Jonathan, attorney-at-law, Western Center on Law and Poverty, Inc., letter from 532
Levin, A. Leo, Director, Federal Judicial Center, prepared statement 159

Maroni, William, Assistant U.S. Trade Representative for Congressional Affairs, Office of U.S. Trade Representative 105
Markey, Hon. Howard Thomas, chief judge, U.S. Court of Appeals for the Federal Circuit, prepared statement 152
McCorquodale, Senator Dan, 12th California District, letter from 530
McElroy, John H., Assistant Administrator, National Environmental Satellite Data and Information Service, NOAA 295
Miller, James C., III, Chairman, Federal Trade Commission 71
  Prepared statement 74
Molina, Representative Gloria, assemblywoman, 56th District, California, letters from 542, 547
Montgomery, William J., Administrative Director, Arms Control and Disarmament Agency 263
Mullen, Francis M., Jr., Administrator, Drug Enforcement Administration 1
  Prepared statement 9
Murphy, Ambassador Peter O., Deputy U.S. Trade Representative 105
  Prepared statement 107

Neill, Charles R., Controller, Department of Justice 1, 677
Nelson, Alan C., Commissioner, Immigration and Naturalization Service 677
Newkirk, Douglas, Assistant U.S. Trade Representative for GATT Affairs, Office of U.S. Trade 105

O'Connor, Sandra Day, Associate Justice, U.S. Supreme Court 135

Petris, Senator Nicholas C., 9th Senatorial District, California, letter from 544
Potack, Gene, Director, Office of Field Services, Legal Services Corporation 487
Powell, Lewis F., Jr., Associate Justice, U.S. Supreme Court 135
  Prepared statement 138

Page

Re, Hon. Edward D., chief judge, U.S. Court of International Trade, prepared statement 154
Robbins, James A., Personnel and Organizational Development Officer, U.S. Supreme Court 135
Roberti, Senator David, State of California, letter from 541
Rooney, Kevin D., Assistant Attorney General for Administration, Department of Justice 677

Sanders, James C., Administrator, Small Business Administration 459
    Prepared statement 460
Shaffer, John R., Director, Budget Staff, Department of Justice 1
Shear, H.E., Administrator, Maritime Administration, prepared statement 867
Smith, James, Budget Officer, NOAA 295
Smith, William French, Attorney General, U.S. Department of Justice 677
Smith, William Reece, Jr., American Bar Association, letter from 622
Streeter, James, Director, Government Relations, Legal Services Corporation 487
Swendiman, Alan R., General Counsel, Legal Services Corporation 487

Twiss, John R., Jr., Executive Director, Marine Mammal Commission 437

Van Stavoren, William D., Deputy Assistant Attorney General for Administration, Department of Justice 1

Waters, Representative Maxine, assemblywoman, 48th District, California, letters from 545, 546
Watson, Senator Diane E., State of California, Legislature, letter from 550
Webster, William H., Director, Federal Bureau of Investigation 1
    Prepared statement 4
Weicker, Hon. Lowell P., Jr., U.S. Senator from Connecticut, prepared statement 299
White, Charles, Comptroller, Legal Services Corporation 487
White, Hon. George M., Architect of the Capitol, prepared statement 136
Williams, James A., Deputy Executive Director for Management, Federal Trade Commission 71
Williams, James K., Chief, Budget Section, Operational Support Division, DEA 1
Winchester, James W., Associate Administrator, NOAA 295
Winslow, Walter T., Deputy Director, Bureau of Competition, Federal Trade Commission 71
Wolff, Paul M., Assistant Administrator, National Ocean Service, NOAA 295
Wong, Alfred, Marshal, U.S. Supreme Court 135

Yandle, Bruce, Executive Director, Federal Trade Commission 71

Zirkel, Frederick J., Director, Division of Budget and Finance, Federal Trade Commission 71

SUBJECT INDEX

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Page
Annual report by 878
Budget request 871, 873
Commission chairmanship, rotation of 871
Fiscal year 1985 activities 872
GAO audit 873
H.R. 4504 893
Madrid meeting, followup to 872
Other services 877
Personnel compensation 875
Printing and reproduction 877
Rent, communication, and utilities 876
Supplies and materials 877
Travel and transportation 876

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

AEGIR program 321
Atmospheric programs 304, 310, 314, 319, 323
Budget request 296, 301, 307
Reprogramming 381
Catfish farm, funding for 317
Columbia River salmon hatcheries 304
DeConcini, Hon. Dennis, U.S. Senator from Arizona, questions submitted by 419
Diadema sea porcupines 324
Fishermen's guarantee fund 413
Fishery products, trade deficit for 324
Geodetic survey 409
Great Lakes environmental research laboratory 414
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 403
Hydrolab facility 297
LANDSAT 403
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 327
MAKL II program 322
Marine fishery resource program 303, 308, 315, 323
NOAA directive 36-16 422
Ocean and coastal programs 302, 307, 319, 321, 327
Ocean research, scientific efforts toward 297
Program support 312, 382
Regional councils, problems with 316
Research programs 318
Satellite and environmental data and information services 311, 345
Sea grant program 319, 320
Stevens, Hon. Ted, U.S. Senator from Alaska, questions submitted by 363
Vertical releveling program 411
Weather forecast offices 417
Weicker, Hon. Lowell P., Jr., U.S. Senator from Connecticut, questions submitted by 366

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

(*See also* FBI and DEA)

Page
Antitrust enforcement 707, 787
Atlanta detentions 692
Border consolidation plan 700, 820, 834, 838
Border control, increase of 680, 687
Border interdiction system 696, 799
Boulder rider 707
Budget request 680
    Constraints on 686
Bureau of Justice Statistics 739
Career criminals 709
Case management systems 754
Central American illegal aliens 688
Chiles, Hon. Lawton, U.S. Senator from Florida, questions submitted by 834
Community anticrime program 736
Contract detention centers 711
DeConcini, Hon. Dennis, U.S. Senator from Arizona, questions submitted by 820
Deportations 693
Drug czar, question of 697
Drug Enforcement Administration 774
Federal Bureau of Investigation 778
Foreign Claims Settlement Commission 729
Foreign counterintelligence 681
Federal excess property program 731
Federal prison system expansion 681, 735, 790, 811, 840, 849
Foreign travel 855
Haitian aliens 691, 737
Hawaiian Islands, drug trafficking in 830
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 793, 845
Hope Village Community Correctional Center, analytical report on 733
Immigration and Naturalization Service 747, 796, 845
INS staffing levels 702, 797, 807, 834
Justice Assistance, Office of 712, 817
Justice Building Service 720
Justice Management Division 715
Kevin Rooney testimonial 712
Law Enforcement Coordinating Committee initiative 682
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 714, 838
Married Cubans 688, 689, 690, 692, 695, 737
Multistate intelligence program 722
NNBIS, functioning of 699
Northeast prison facility 708, 735
Office of Professional Responsibility 750
Office of Internal Inspections 753
Organized Crime Drug Enforcement Task Forces 678, 680, 794, 841
Presidential Commission on Organized Crime 739
President's private sector survey 683
Prison construction 710, 735, 788
Prison overcrowding 709, 791
Prisoner education funding 735
Private attorneys 714
Quantico expansion 683
Rudman, Hon. Warren, U.S. Senator from New Hampshire, questions submitted by 786
Simpson-Mazzoli bill 686
Specter, Hon. Arlen, U.S. Senator from Pennsylvania, questions submitted by. 788
States, cost of aliens to 694
Tax evasion cases, pursuit of 684
Tax litigation initiative 681
Tax simplification programs 685
Telecommunications network programs 682, 759

Page
Threat analysis group 729
Victim/Witness and LECC coordinators 729, 751
White-collar crime 786
Witness security program 730, 753

FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION

(*See also* Attorney General)

Asset removal schools 45
Automated information systems 37
Budget request 2
  Spending freeze, impact of 22
Capitol Hill task force 45
Career criminal aspects 26
Caseload investigations 3, 40
Cocaine, *Rosenthal* case, seizure in 20
Communications systems:
  Overseas programs 37
  Variations in 20
Domestic Law Enforcement Program 46
Domestic terrorism investigations 31
FBI trainee program 38, 57
Financial Investigative Training School 50
Fingerprint identification services 30, 33, 60
Foreign Cooperative investigations 39, 42, 44, 55
Freedom of Information Act litigation 31
Grace Commission 21
Heroin:
  Purity and price of 19
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 56
Informants, control of 27, 60
Intelligence programs 21, 45
Investigation activities 32
JURIS services 46
Juveniles, records checks on persons working with 25
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 30
Marijuana:
  Domestic eradication efforts 52
  U.S. growing, detection of 49
Narcotics investigations 28, 66
  Prioritization of drugs 47
Olympic Games, antiterrorist coverage of 24, 35
Organized Crime Drug Enforcement Task Forces 2, 53, 55, 59
  Class levels, violations by 42
  Domestic program activities 40
  Florida 67
  Funding method for 19
  Intelligence specialists 49
Interdiction efforts 41, 48
13th Task Force 50
PE/PI Program 53
Police training programs 22
  Caribbean 23
Representation funds 62
State and local training programs 44
Unidentified persons file 34
Violent crime, programs against 46
White-collar crime program 21, 33, 56

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

Budget request 867
Marine schools, assistance to 869
National security support capability account 870

Page
Operating-differential subsidies 868
Operations and training 868
Other operating expenses 870
Research and development 868

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Automobile imports 129
Budget request 105
Counterfeit goods, illegal flow of, to United States 130
Duties, reduction in 122
Footwear issue 115
Foreign steel imports 117, 125
Harmonized Code Tariff System 124
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 119
Intellectual property rights 131
Israel, free trade area with 130
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 119
Service industry 117
Shoe industry, import penetration of 116
Textile and apparel imports 121
Trade deficit 119
Trade reorganization 116
Wine trade, regulatory barriers to 126
Workload, four phases of 106

FEDERAL MARITIME COMMISSION

Activities, overview of 899
Automated tariff filing system 899
Budget request 898
  Estimates, summary of 901
Commercial shipping operations 900
Field office budget 903
Salaries and expenses 902

FEDERAL TRADE COMMISSION

Ad Substantiation Program 95
Administrative law judges, reduction 102
Aircraft, smoking on 72
Airline rate structures 102
Antitrust activities 80, 82, 85, 89
Auto expectations study 97
Automated recordkeeping system (OSCAR) 92
Bankruptcy cases, studies of 98
Boulder decision 84
Budget request 71, 74
CAB transfer 80, 87, 101
Competition, effects of regulation on 91
Consumer protection, economic studies in 91, 96
Defective playground equipment 59
Fiscal year 1984 supplemental 87
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 96
Insurance studies 97
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 87
Line of Business Program 87
Mergers, activities on 81
Missions of 72, 90
New competition studies 98
Object class programs 94
Program and management efficiencies 76
Program reductions 89
Real estate study 94, 100

Page

Regional offices ... 73, 87
Resale price maintenance ... 83
Role of ... 81
Rudman, Hon. Warren, U.S. Senator from New Hampshire, questions submitted by ... 94
Savings by ... 72
Standard level user charges ... 93
Taxicab licenses ... 84
Transportation competition program ... 88

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

American studies for Japanese ... 908
Arts program ... 908
Budget request ... 906
Japanese studies for Americans ... 907
Public education, research and programs for ... 909

LEGAL SERVICES CORPORATION

Affirmative rider ... 505
Budget request ... 488, 494, 502
Carryover funds ... 515
Competitive bids ... 499
Corporation retirement programs ... 496
Delivery research and experimentation ... 561, 663
Elderly and handicapped ... 503, 582
Field offices, communication with ... 509, 512
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by ... 669
TOLTA Program ... 495
Law school clinic programs ... 496
Lawsuits ... 513
Legal assistance, people served by ... 497
Lobbying regulation ... 510, 554
Local programs, private attorney involvement in ... 619
National and State support centers ... 503
New funding formula ... 490, 494, 504
Nominees ... 497
Non-LSC funding ... 498
Outside legal services ... 514
Paperwork requirements ... 587
Past abuses, investigations of ... 514
Private bar involvement ... 492, 495
Private clinics ... 496
Regulations ... 508
Reporting requirements ... 506
Reprogramming ... 516
Rudman, Hon Warren, U.S. Senator from New Hampshire, questions submitted by ... 518
Rural areas, services provided to ... 499
Senate Housing Advisory Task Force, legislation recommended by ... 537
Service, quality of ... 501
Western Center on Law and Poverty, quarterly report of ... 521

MARINE MAMMAL COMMISSION

Budget request ... 437
  Finding specifies ... 446
Commission goals from fiscal year 1984 ... 437, 440
Domestic policies ... 439
Fiscal year 1985, objectives for ... 438, 443, 446
Hawaiian Monk Seal Program ... 447
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by ... 448
North Atlantic Right Whale population ... 447
Operating costs ... 456
Research programs ... 448, 456

Page

Weicker, Hon. Lowell P., Jr., U.S. Senator from Connecticut, questions submitted by 456

SMALL BUSINESS ADMINISTRATION

Budget request 459
Bumpers, Hon. Dale, U.S. Senator from Arkansas, questions submitted by 483
Business loan and investment fund 462
Debt Collection Program 482
Direct loans 465, 468, 479
Disaster legislation 464, 477
  Loan fund 481
  Provisions, implementation of 483
Economic development (Sec. 503) 465, 477, 480
"El nino" condition 478
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 480
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 468
Lease guarantees revolving fund 463
Management assistance programs 484
Salaries and expenses 463
Small business development centers 466, 479
Surety bond guarantees revolving fund 463
Weicker, Hon. Lowell P., Jr., U.S. Senator from Connecticut, questions submitted by 472
White House conference 464, 476

THE JUDICIARY

Courts of Appeals, District Courts, and Other Judicial Services

Administrative office facilities 261
Asbestos cases 201
Automation systems 166, 197, 239, 244, 258
Implementation of, table on 185
Bankruptcy courts, salaries and expenses of 178, 239, 254
Budget request 169, 186, 191
  Reductions in, chart on 190
Comparative workload data, fiscal year 1978 and 1983, table on 184
Court-annexed arbitration 200
Court security 182, 188, 194
Defender services 175
Discretionary programs, freeze on 192, 194
Drug dependent offenders, services for 181, 255
Executions, appeal of order for 237
Federal courts, backlog in 198
Holding cells 189
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 259
Increased caseload 166, 169, 200,
Judges, salaries of 171, 241
Jurisdictional limitations 199
Jurors and commissioners, fees of 176
Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 239
Operation and maintenance expenses 177
Pretrial services 195, 236, 245, 250, 260
Consolidation on 235
Rental space 256
Reprogramming action 168
Social Security cases 259
Space and facilities 181, 261
Speedy Trial Act 200
Standard level user charges 241
Summary jury trials 202
Report on 204
Supplemental, 1984 186
Supporting personnel, salaries of 171, 242

Page

SUPREME COURT OF THE UNITED STATES

- Binding arbitration, incentive for 149
- Budget request 136
- Buildings and grounds, care of:
  - Appropriation request for 136
  - Supplemental for 136
- Cases:
  - Disposition of 146
  - Filings, increase in 144
- Computers and word processing equipment, use of 148
- Court-annexed arbitration 148
- Court workload 144
- Laxalt, Hon. Paul, U.S. Senator from Nevada, questions submitted by 150
- Motor vehicle, rental expense for 137, 150
- Multidistrict consolidation 149
- Pay supplemental 145, 150
- Printing, savings in 146
- U.S. reports, printing of 137
- Vacancies 150

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

- Additional committee questions 285
- Arms and technology transfer 272
- Bilateral negotiations 267
- Budget request 264, 277, 280
- Conference on Security and Cooperation in Europe 282
- Defense programs and analysis 273
- Delegation expenses 278, 286
- External research 277
- Mission of 264
- Multilateral negotiations 268
- Mutual and balanced force reduction talks 281
- Nonproliferation 270
- Organization chart 266
- Personnel 282, 285
- Public affairs/public diplomacy 276
- Reduced Enrichment in Research and Test Reactors (RERTR) Program, transfer of 283, 285
- Representation funds 279
- Requirements, summary of 292
- Reearch program 283
- Space arms control 268
- Travel costs 287
- U.S.-U.S.S.R. arms talks 281
- Verification and intelligence 274